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Kalthia Group Hotels, Inc. and Manas Hospitality LLC d/b/a Holiday Inn Express Sacramento, A Single and/or Joint Employer and UNITE HERE! Local 49. Case 20–CA–176428, 20–CA–178861, and 20–CA–182449

June 25, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, MCFERRAN, AND EMANUEL

On September 8, 2017, Administrative Law Judge John T. Giannopoulos issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings,¹ and conclusions² and to adopt the recommended Order as modified and set forth in full below.³

¹ The Respondent has excepted to some of the judge’s credibility findings. The Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In excepting to the judge’s findings that it violated Sec. 8(a)(1) by (1) telling Vanessa Abel during her interview and on multiple other occasions not to join the Union, and (2) telling Suhad Salman not to sign anything from the Union and falsely equating union benefits to government benefits, the Respondent does not state, in either its exceptions or supporting brief, any grounds on which these purportedly erroneous findings should be overturned. Therefore, in accordance with Sec. 102.46(b)(2) of the Board’s Rules and Regulations, we shall disregard these exceptions. See *Holsum de Puerto Rico, Inc.*, 344 NLRB 694 fn. 1 (2005), *enfd.* 456 F.3d 265 (1st Cir. 2006).

We do not rely on *Universal Fuel, Inc.*, 358 NLRB 1504 (2012), a decision that issued at a time when the Board included two persons whose appointments to the Board the Supreme Court subsequently held were not valid. See *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014).

² The judge found that the Respondent violated Sec. 8(a)(5) by circulating a decertification petition while bargaining for a successor contract. Although the Respondent excepted to the judge’s fact and credibility findings regarding the decertification petition, it does not argue on exceptions that the judge’s legal conclusion that such conduct violates Sec. 8(a)(5) is unwarranted.

³ We have amended the judge’s remedy, and we have modified the judge’s recommended Order and notice to conform to the Board’s standard remedial language.

AMENDED REMEDY

Having found that the Respondent engaged in certain unfair labor practices, we shall order it to cease and desist from engaging in such conduct and, as explained in the remedy section of the judge’s decision, to take certain affirmative action designed to effectuate the policies of the Act.

We reverse the judge and order the Respondent to read aloud our remedial notice to employees during worktime. In so doing, we observe that in March 2016, a notice was read to employees, pursuant to an agreement settling earlier unfair labor practice charges, expressly stating that the Respondent would not “ask employees to get rid of the Union by signing a decertification petition.” But only 2 months later, the Respondent did just that. As detailed by the judge, the Respondent—through its human resources manager and housekeeping manager—repeatedly directed employees to sign a decertification petition and used threats, deceit, and interrogation to secure signatures. In addition, the Respondent repeatedly directed employees not to associate with the Union, misled employees about the nature of union membership, and engaged in sham bargaining. In light of these circumstances, we find that a public reading of our notice is appropriate “to dissipate as much as possible any lingering effects of the Respondent’s unfair labor practices,” and to allow the employees to “fully perceive that the Respondent and its managers are bound by the requirements of the Act.” *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007) (and cited cases), *enfd.* mem. 273 Fed. Appx. 32 (2d Cir. 2008). We find the need for a notice reading to be particularly compelling here in order to counteract the Respondent’s flagrant disregard of the earlier reading to employees, which signaled that it had no intention to adhere to the law.⁴

Accordingly, we will require the Respondent to convene a meeting or meetings at which the remedial notice shall be read aloud to the Respondent’s employees by a responsible management official in the presence of a Board agent and an agent of the Union if the Region or the Union so desires, or, at the Respondent’s option, by a Board agent in the presence of a responsible management official and, if the Union so desires, in the presence of an agent of the Union. Given that the Respondent’s general

⁴ Member Emanuel agrees with the judge that a notice-reading remedy is not warranted in this case. He emphasizes that the settlement agreement into which the Respondent entered in February of 2016 included a nonadmission clause and that the Respondent has not been found to have otherwise committed any similar violations of the Act in the past. The Respondent’s violations in the present case, although serious, are simply not numerous or egregious enough to warrant the extraordinary remedy of a notice reading.

manager, human resources manager, and housekeeping manager participated directly in the unfair labor practices here, it is appropriate to require supervisors and managers to attend the notice reading. See *HTH Corp.*, 361 NLRB 709, 716 (2014). In addition, because many of the Respondent's employees speak Spanish or Hindi, we will require the Respondent to provide Spanish and Hindi language interpreters, who shall translate aloud for the assembled unit employees the language of the notice.

Among other remedies, the judge recommended an affirmative bargaining order to remedy the Respondent's refusal to bargain in good faith with the Union.

For the reasons set forth in *Caterair International*, 322 NLRB 64 (1996), we agree that an affirmative bargaining order is warranted in this case as a remedy for the Respondent's unlawful refusal to bargain in good faith with the Union. We adhere to the view that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." *Id.* at 68.

In several cases, however, the U.S. Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Bldg. Material Corp. v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); *Exxel/Atmos, Inc. v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent*, *supra* at 738, the court summarized its requirement that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' § 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act."

Although we respectfully disagree with the court's requirement for the reasons set forth in *Caterair*, *supra*, we have examined the particular facts of this case as the court requires and find that a balancing of the three factors warrants an affirmative bargaining order.⁵

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the Respondent's refusal to bargain in good faith with the Union. It is particularly appropriate here, where the Re-

spondent overrode the unit employees' exercise of their Section 7 rights not only by engaging in sham bargaining, but by simultaneously directing employees to sign a decertification petition, making unlawful threats and statements, and engaging in unlawful interrogation. At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation.

(2) An affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. That is, it removes the Respondent's incentive to delay bargaining in the hope of further discouraging support for the Union. Eliminating this incentive is particularly compelling here, where the Respondent sought to delay bargaining so that it could undermine the union by forcing employees to sign a decertification petition. It also ensures that the Union will not be pressured by the Respondent's failure to bargain in good faith to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease-and-desist order.

(3) A cease-and-desist order, alone, would be inadequate to remedy the Respondent's refusal to bargain with the Union in these circumstances because it would permit another challenge to the Union's majority status before the taint of the Respondent's unlawful failure to bargain in good faith has dissipated, and before the employees have had a reasonable time to regroup and bargain through their representative in an effort to reach a successor collective-bargaining agreement. Such a result would be particularly unjust in circumstances such as those here, where the Respondent unlawfully sought to undermine the Union on multiple fronts and, as described above, brazenly repudiated its earlier pledge not to ask employees to sign a decertification petition. In these circumstances, the Respondent's failure to bargain in good faith would likely have a continuing effect, thereby tainting any employee disaffection from the Union arising during that period or immediately thereafter. Moreover, the imposition of a bargaining order would signal to employees that the rights guaranteed under the Act will be protected. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

⁵ Member Emanuel agrees with the District of Columbia Circuit that the Board should justify, on the facts of each case, the imposition of an affirmative bargaining order. He finds that the imposition of an affirmative bargaining order in this case is appropriate for the reasons that follow.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the allegations in this case.⁶

ORDER

The National Labor Relations Board orders that the Respondent, Kalthia Group Hotels, Inc., and Manas Hospitality LLC d/b/a Holiday Inn Express Sacramento, a single employer, Sacramento, California, their officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Instructing employees to sign a petition, or any other document, to decertify the Union.
 - (b) Threatening employees with discharge if they do not sign a petition, or any other document, to decertify the Union.
 - (c) Instructing employees not to sign any documents given to them by the Union.
 - (d) Instructing employees not to go with their coworkers if they are invited to join the Union.
 - (e) Instructing employees not to join the Union or not to talk to union representatives.
 - (f) Purposely misleading employees about the benefits received from union dues deductions in order to dissuade them from supporting the Union.
 - (g) Coercively interrogating employees about their union membership, activities, sympathies, and/or support, including by asking employees why they cancelled their signatures from a petition to decertify the Union.
 - (h) Failing and refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit.
 - (i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms

and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All employees employed by Respondent at the Holiday Inn Express, located between 15th & 16th Streets and G & H Streets, in Sacramento, California, performing the work covered by the collective-bargaining agreement between the Union and Hospitality Sacramento L.P., effective June 1, 2006 to December 31, 2009.

(b) Within 14 days after service by the Region, post at the Holiday Inn Express Sacramento, copies of the attached notice marked "Appendix,"⁷ in English, Spanish, and Hindi. Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the closed facilities any time since March 3, 2016.

(c) Mail a copy of the notice to the last known addresses of Suhad Salman, Sylvia Arteaga Figueroa, and Vanessa Abel.

(d) Within 14 days after service by the Region, hold a meeting or meetings, which shall be scheduled to ensure the widest possible attendance of unit employees, at which time the attached notice marked "Appendix" is to be publicly read by a responsible management official in the presence of a Board agent and an agent of the Union if the Region or the Union so desires, or, at the Respondent's option, by a Board agent in the presence of a responsible management official and, if the Union so desires, the presence of an agent of the Union. In either case, the Respondent shall make translation available for Spanish and Hindi-speaking employees.

⁶ The Respondent argues for the first time on exceptions that it did not have an obligation to bargain with the Union; the Respondent on this basis excepts to the judge's 6-month extension of the successor bar. We reject this exception because "[a] contention raised for the first time in exceptions to the Board is ordinarily untimely raised and, thus, deemed waived." *Yorkaire, Inc.*, 297 NLRB 401, 401 (1989), enf. 922 F.2d 832 (3d Cir. 1990).

In any event, we find the judge's 6-month extension of the successor bar to be duplicative of the affirmative bargaining order remedy—which requires that the Respondent bargain in good faith with the Union for a reasonable period of time, at minimum 6 months. See *Lee Lumber & Building Material Corp.*, 334 NLRB 399, 402 (2001), enf. 310 F.3d 209 (D.C. Cir. 2002).

⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. June 25, 2018

Mark Gaston Pearce, Member

Lauren McFerran, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT instruct you to sign a petition, or any other document, to decertify UNITE HERE! Local 49 (the Union).

WE WILL NOT threaten you with discharge if you do not sign a petition, or any other document, to decertify the Union.

WE WILL NOT instruct you not to sign any documents given to you by the Union.

WE WILL NOT instruct you not to go with your coworkers if you are invited to join the Union.

WE WILL NOT instruct you not to join the Union or not to talk to union representatives.

WE WILL NOT purposely mislead you about the benefits received from union dues deductions in order to dissuade you from supporting the Union.

WE WILL NOT coercively interrogate you about your union membership, activities, sympathies, and/or support, including by asking you why you cancelled your signatures from a petition to decertify the Union.

WE WILL NOT fail and refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All employees employed by Respondent at the Holiday Inn Express, located between 15th & 16th Streets and G & H Streets, in Sacramento, California, performing the work covered by the collective-bargaining agreement between the Union and Hospitality Sacramento L.P., effective June 1, 2006 to December 31, 2009.

KALTHIA GROUP HOTELS, INC. AND MANAS
HOSPITALITY LLC D/B/A HOLIDAY INN EXPRESS
SACRAMENTO

The Board's decision can be found at www.nlr.gov/case/20-CA-176428 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



Yaromil Velez-Ralph, Esq., and Joseph Richardson, Esq. for the General Counsel.
Scott Wilson, Esq. for the Respondent.

DECISION

STATEMENT OF THE CASE

JOHN T. GIANNOPOULOS, Administrative Law Judge. Based upon charges filed by UNITE HERE! Local 49 (Union), on October 26, 2016, the Regional Director for Region 20 of the National Labor Relations Board (Board) issued an Order consolidating cases, amended consolidated complaint and notice of hearing (complaint) alleging that Kalthia Group Hotels, Inc. (Kalthia Group) and Manas Hospitality LLC d/b/a Holiday Inn Express Sacramento (Manas Hospitality) (together referred to as “Respondent” or “Holiday Inn Express”), committed multiple violations of Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act (Act).¹ Specifically, the Complaint alleges Respondent violated Section 8(a)(1) of the Act by: instructing employees not to engage in union activities; threatening employees; promising employees better benefits, and continued work, if they did not support the Union; soliciting employee signatures for, and instructing employees to sign, a decertification petition; arranging for employees to meet with the decertification petition solicitor; interrogating employees; and creating the impression of surveillance. The complaint also alleges that Respondent failed to bargain in good faith with the Union, in violation of Section 8(a)(5) of the Act. Respondent denies the alleged violations. The complaint allegations were tried before me on November 29, 2016, in San Francisco, California, and on November 30–December 2, 2016, and January 10–11, 2017, in Sacramento, California.

Based upon the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following findings of fact and conclusions of law.²

I. JURISDICTION AND LABOR ORGANIZATION

Kalthia Group is a California corporation with an office and place of business in San Diego, California where it is engaged in the business of owning and operating hotels. It derives annual gross revenues in excess of \$500,000, and purchases and receives goods valued in excess of \$5000 directly from points located outside the State of California. Kalthia Group admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Manas Hospitality is a California limited liability company with an office and place of business in Sacramento, California where it is engaged in the business of operating a hotel. Manas Hospitality derives gross revenues in excess of \$500,000, and purchases and receives goods valued in excess of \$5000 direct-

ly from points located outside the State of California. Manas Hospitality admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties stipulated that, for purposes of this proceeding, Kalthia Group and Manas Hospitality have a common ownership and management, a centralized control of labor relations, interrelated operations, and are a single employer. (GC 2) Therefore, I find they constitute an integrated enterprise and are a single employer. See *Radio & Television Board Technicians Local Union 1264 v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255, 256 (1965).

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS

A. Background

Respondent operates a Holiday Inn Express hotel in Sacramento, California, near the Sacramento Convention Center. Respondent purchased the hotel on about August 1, 2015, from Hospitality Sacramento L.P., which had been operating the hotel for a number of years. Hotel employees have been represented by the Union since at least 2006, and at the time of the purchase were working under the terms of a collective-bargaining agreement (CBA) between the Union and Hospitality Sacramento.³ According to the CBA’s recognition clause, the following employees were represented by the Union:

All employees employed by Respondents at the facility located at 728 Sixteenth Street, Sacramento, California in the following classifications: Bartender; Bar Helper; Food/Beverage Server; Busperson; Hostperson/Cashier; Head Banquet Server; Cook; Fry; Pantry; Kitchen Worker; Porter; Bellperson; PBX; Guest Room Attendant; Houseperson; Inspector/Inspectress; Laundry Worker; Head Laundry; Room Clerk/Reservation Clerk; Night Auditor; Head Gardener; Gardener; Rug Shampooer; and Handyman.

The CBA contained a successorship clause requiring any purchaser to retain the bargaining unit employees and assume the terms of the agreement. Therefore, at the time Respondent purchased the property, it hired the existing hotel employees. For employees, the transition was seamless and there was no interruption to their work schedules. As required, Respondent also assumed the obligations of the CBA and has continued to comply with the terms of the agreement through the date of the hearing. (Tr. 189–197, 291–292, 298–299, 302; GC 3, p. 3, 11.)

Respondent’s management team at the hotel consisted of: Mohammed Nazeem (Nazeem), the hotel’s general manager; Sanjita Nand (Nand), the human resources manager; and Elsa

¹ Citations to the transcripts will be denoted by “Tr.” with the appropriate page number. Citations to the General Counsel and Respondent Exhibits will be denoted by “GC” and “R.” respectively. Transcript and exhibit citations are only intended as an aid, as factual findings are based upon the entire record as a whole.

² Unless otherwise noted, witness demeanor was the primary consideration used in making credibility resolutions. Testimony contrary to my findings has been discredited.

³ The CBA has an effective date of June 2006 through December 2009, and thereafter allows either party to terminate the agreement upon 10 days written notice. There is no evidence that anyone terminated the agreement. Instead, the parties decided to continue operating under the terms of the CBA, except the employer agreed to pay all healthcare/benefit premium increases. (Tr. 289–291.) The terms of the CBA also covered a Clarion branded hotel; however that hotel closed in 2012. (Tr. 188, 272, 294.)

Gutierrez, (Gutierrez) the housekeeping manager. The Union did not have a shop steward at the hotel. Instead, a committee of workers would contact Union Representative Roxana Tapia (Tapia) on a daily basis. Tapia, the Union's assigned representative for the hotel, reported directly to Chris Rak (Rak), the union president. Along with speaking with the committee members daily, Tapia would go to the hotel about once a week to visit employees during their breaks. When Tapia visits the hotel, she first alerts Nazeem or Nand that she is on the property, and then goes to the employee break area, which is in the first floor breakfast lounge. (Tr. 187, 194, 345–352, 387–388, 605–606.)

The first meeting between Respondent and the Union occurred in late July 2015, prior to the hotel's sale. Various individuals were present at this meeting including Rak and Nazeem; the parties discussed their aspirations for a smooth transition. Respondent committed to honoring the terms of the CBA, and also stated its desire to delay bargaining for 6 months in order to better understand the hotel's operations before starting negotiations. Rak replied that it was not his decision to make, and that he needed to speak with employees. (Tr. 197.)

In mid-September 2015, Rak met with employees to discuss the company's request to delay bargaining. Rak asked whether employees would consider a 6-month bargaining delay if Respondent agreed to pay the increased health and welfare premiums that were scheduled to take effect on January 1, 2016. Employees thought this was a good idea. (Tr. 198–199.)

About a week and a half later, after a meeting about various workplace issues, Rak told Nazeem the Union would be open to a 6-month delay in bargaining if the company committed to pay the increased health and welfare premiums due to be implemented on January 1, 2016. Nazeem said he would check into the matter and contact Rak accordingly. However, Nazeem never replied to Rak.⁴ And the Union did not follow-up because it learned that a decertification petition was being circulated at the hotel and it suspected Respondent was involved. (Tr. 199–200, 309–310, 686–688, 715.)

Indeed, such a document had been circulating, and on October 19, 2015, Dharmesh Tandel,⁵ a front-desk employee, filed a petition in Case 20–RD–162195 seeking an election to decertify the Union. The Union filed charges with the Board alleging the hotel was behind the decertification effort, and on November 30, 2015, a consolidated complaint issued alleging, in relevant part, that the employer's actions surrounding the decertification effort violated the Act (November 2015 complaint). (GC 3, pp. 43–44, 52–59.)

On January 11, 2016, the decertification petition was dismissed.⁶ On February 9, 2016, the hotel entered into a settle-

ment agreement with the Board, which included a nonadmissions clause, settling the allegations in the November 2015 complaint.⁷ As part of the settlement, the company agreed to post a notice in English and Spanish, and consented to a notice reading. Respondent held an employee meeting on March 6, 2016, where Board agents read the notice to workers. Thereafter, a new decertification petition was circulated and filed on June 30, 2016. (Tr. 823–824; GC 3, pp. 48–51.)

B. The Parties' Bargaining History

While the allegations surrounding the hotel's alleged involvement in Tandel's decertification petition were being investigated, on November 9, 2015, the Union sent Respondent a formal request to start bargaining for a new collective-bargaining agreement. The parties held their initial bargaining session on December 8, 2015. From the start of bargaining, through the close of the hearing, ten sessions were held and over 2 years had passed. Notwithstanding, the parties were unable to reach agreement on a new contract. (Tr. 200–203; GC 12, 13.)

1. December 8, 2015 bargaining session

The December 8 bargaining session was held at the hotel. At the meeting, Respondent expressed its desire to pay fair wages and benefits. In turn, the Union presented its first set of proposals for a new contract. The Union proposed changes to 13 sections of the CBA, including new proposals for the key economic provisions of wages, healthcare, and pensions. The majority of the meeting involved reviewing the Union's proposals. (Tr. 208, 211–214; GC 14.)

At the time, hotel employees were still working under the wage rates contained in the CBA, which had not been increased since June 2009. For example, for the past 6 years, room attendants had been paid \$9.16 per hour. Therefore, the Union told Respondent that a wage increase was the Union's biggest priority in negotiations. Accordingly, the Union's initial wage proposal called for increases across all classifications ranging from 39 percent to 52 percent in the initial year of the contract, and then 3 percent to 4 percent thereafter through August 2018. Under the Union's wage proposal, the hourly wage rate for room attendants would increase from \$9.16 to \$13.30 in August 2015, and ultimately reach \$14.60 per hour in August 2018. Respondent listened, but did not make any proposals to the Union. (Tr. 214, 297; GC 14.)

2. January 26, 2016 bargaining session

The next bargaining session occurred at the Union's offices on January 26, 2016. At this meeting Respondent presented its initial bargaining proposals to the Union for a new contract. Respondent proposed to significantly change the existing seniority system, seeking a merit system with seniority being used only if Respondent decided all else was equal. Respondent also wanted to remove the union security clause, which had been in effect since at least 2006, without advancing any business justi-

⁴ Notwithstanding, Respondent continued to pay the health and welfare premiums, along with all premium increases promulgated by the benefit trust funds. (Tr. 310–311; Tr. 688–689.)

⁵ Tandel stopped working at the hotel in about May 2016. (Tr. 299–300, 823.)

⁶ I take administrative notice of the petition and the Region's dismissal letter. *The Levy Co.*, 351 NLRB 1237, 1238 (2007) (Board takes administrative notice of NLRB proceedings, that certain charges were dismissed for lack of evidence, and the dismissals were upheld by the Office of Appeals.).

⁷ The facts surrounding Tandel's petition, the 2015 charges filed by the Union, and the November 2015 complaint, are included for background only and have not been considered in my analysis of the alleged unfair labor practices.

fication. Also, the company sought the ability to subcontract without restriction, and proposed altering the successorship clause so a future purchaser would not be required to hire existing employees or honor the union contract. Finally, for many key provisions of the CBA, including medical, dental, pensions, and wages, instead of making proposals, Respondent simply stated that it “rejected” the Union’s initial proposal without explanation and that its counterproposals would be “forthcoming.” The Union viewed the company’s proposals as “aggressive,” and informed the company that the proposal to remove the union security clause would be “an issue” in negotiations. The Union also expressed its concern that the seniority proposal gave Respondent almost complete discretion to decide matters including work schedules and vacations. Respondent replied saying that it did not want to be bound by seniority if the company thought one worker was better than another. During the meeting, the parties also discussed the issue of scheduling days off, and the next day Respondent sent the Union a proposal on scheduling time off. The next bargaining session occurred on March 8, 2016. (Tr. 215–224, 230–231, 252–253, 326; GC 15, 16, 24.)⁸

3. March 8, 2016 bargaining session

No written proposals were exchanged at the March 8 meeting, which started with Respondent agreeing to allow employees to be scheduled for consecutive days off. Respondent also said it would try to give workers the same day off on a weekly basis when practicable. (Tr. 231–233.)

The parties next discussed wages. Respondent stated that it was premature to propose a wage increase until it had owned the hotel for 1 year. According to the company, it was not necessarily against a future wage increase, but it needed a 1-year period to evaluate the hotel’s profitability and gauge the amount of an appropriate wage increase. Moreover, Respondent noted that the California minimum wage had increased to \$10 per hour. Thus, as a practical matter, sixteen of the approximately 32 unit employees received an increase as they were making less than the \$10 minimum wage.⁹ Accordingly, Respondent said that the issue of wages would be put on hold until it was able to evaluate the hotel’s profitability for a year. Rak replied saying that it was going to be very difficult moving forward without knowing “where we’re standing on our wages.” (Tr. 234–236, 318, 759–760; GC 17.)

The parties then discussed benefits. Respondent said it had significant homework to do before presenting a health and welfare proposal, which it anticipated presenting at the next meeting. The Union was expecting Respondent to present its benefits proposal at this meeting, as the Union had previously expressed a willingness to examine an alternative health and welfare plan, particularly if the company would put more money into wages. Towards the end of the meeting, the parties discussed the appropriateness of some of the existing contract language involving classifications related to restaurant opera-

tions at the Clarion, which was now closed. Before adjourning, Rak reiterated the Union’s desire to discuss wages. (Tr. 236–237; GC 17.)

4. March 22, 2016 bargaining session

The next meeting occurred on March 22, 2016, at the union office. (Tr. 237–238.) At this meeting, the employer presented a set of written proposals on subjects including health and welfare, subcontracting, union security and a wage reopeners. (Tr. 237–240; GC 18, 19.)

Based upon their previous discussions, the Union was expecting a proposal from the company offering an alternative health and benefit plan. Instead, Respondent proposed keeping the existing union sponsored medical and dental plans for the term of the agreement, which Respondent proposed to only be for 1 year. Also, the proposal was subject to freezing the premiums at the existing levels. The Union explained that this was not viable because the trust funds required somebody (either the employer or the employees) to pay for the cost of any premium increases, which usually occur on January 1 of each year. (Tr. 241–242; GC 18.)

Regarding its other proposals, the employer wanted to remove the existing union security clause from the CBA, and included a paragraph affirmatively stating that the payment of union dues (or agency fees) was not a condition of employment. Respondent agreed to keep the CBA’s language prohibiting the subcontracting of bargaining unit positions, but again proposed removing the CBA’s successorship clause. Regarding wages, the Respondent proposed that employee pay remain the same until July 31, 2016, at which point the contract could be reopened for the express purpose of bargaining wages. As for seniority, Respondent offered that seniority would be considered only if the employer decided that employee qualifications and performance were equal. The Union also presented a package set of proposals at the meeting, agreeing to accept Respondent’s proposals on tipped employees, work schedules, and craft rules, if Respondent agreed to the Union’s proposal to include food and beverage employees in the unit if such positions were created at the hotel. (Tr. 241–244; 319–320; 340–341; GC 18, 20.)

5. April 28, 2016 bargaining session

The parties met again for bargaining on April 28, 2016, at the union office. The Union presented bargaining proposals which maintained most of the language previously put forth by the Union. Respondent stated that it would respond at the next meeting. (Tr. 245–246; GC 23.)

6. May 11, 2016 bargaining session

On May 11, 2016, the parties met and confirmed the tentative agreements they had reached to date. Respondent proposed keeping the same benefit plan for the duration of the agreement, and agreed to pay all premium increases. Respondent also amended its sick leave proposal to conform to California law. An agreement was reached on a grievance procedure. (Tr. 248–250; GC 22.)

At the end of the meeting, the parties said they would be “in touch” for future bargaining dates. However, they did not meet, or exchange proposals, again until September 20, 2016.

⁸ On pp. 229 through 274 of the transcripts Respondent’s counsel is misidentified as “Mr. Brown.”

⁹ The California state minimum wage increased from \$9 to \$10 per hour effective January 1, 2016. (Tr. 312.) See also *Bojorquez v. Abercrombie & Fitch, Co.*, 193 F.Supp. 3d 1117, 1126 (C.D. Cal. 2016).

Rak testified there were two reasons for this delay: (1) the Union did not seek bargaining because committee members were increasingly frustrated by the employer's refusal to make a wage proposal; and (2) the Union learned another decertification petition was being circulated, believed Respondent was involved, and thus focused their resources accordingly. (Tr. 254–256, 261, 739.)

7. September 20, 2016 bargaining session

The next bargaining session occurred on September 20, 2016, at the union office. At this meeting Rak congratulated Respondent for owning the hotel for over 1 year, and stated that he was eager to now hear the employer's position regarding wages. However, Respondent did not present any proposals. (Tr. 256–260; GC 26.)

The Union presented its own set of proposals at the meeting, which contained the same wage increases it originally proposed in December 2015. The Union rejected Respondent's previous seniority proposal. Rak told Respondent that seniority was a major issue for the Union, and that the employer's proposal was gutting the seniority clause. The employer did not reply to any of the Union's bargaining proposals at the meeting. (Tr. 256–261; GC 25.)

8. November 2, 2016 bargaining session

The next meeting occurred on November 2, 2016. Respondent had no proposals to present, but told the Union they were standing firm on issues that the Union deemed important, such as seniority, union security, and successorship. The Union asked for Respondent's reasoning behind its proposal to eliminate the union security clause and Respondent replied saying that it "shouldn't be a condition of employment." (Tr. 262–269.)

At the meeting, Respondent said it would follow the trust fund's direction regarding pensions. However, the Union stated that pension contributions are negotiated by the parties, and not set by the trust fund. Also, notwithstanding the fact they had been bargaining for almost 1 year, the employer was holding firm to a proposed 1-year agreement term. Respondent stated they were not going to propose any wage increases for employees, as the California minimum wage was again set to increase on January 1, 2017, and the majority of workers would receive a 50 cent raise because of mandated increase.¹⁰ (Tr. 262–265; 270; GC 28.)

After hearing Respondent's answer to the Union's September 20 proposals, the Union presented the company a written counter proposal decreasing its proposed wage increase \$1 across all classifications. Thus, under the Union's newest proposal, wages for room attendants would increase in August 2017 from the \$10 minimum wage to \$13.10. (Tr. 261–264; GC 27.)

9. December 13, 2016 bargaining session

While the hearing in this matter was in recess, Respondent and the Union held another bargaining session on December

13, 2016. At the time, only 4 of Respondent's 32 bargaining unit employees made more than \$10.50 per hour, which was the mandated California minimum wage effective January 1, 2017. Respondent presented a written proposal at the meeting giving 9 existing employees a raise that would put their wages higher than the minimum wage. After discussions, Respondent orally committed that wages at the hotel would be at least 10 cents higher than the minimum wage. In response, the Union submitted a counterproposal reducing their November 2 wage proposal by 10 cents across all classifications. (Tr. 261–264, 693–696, 719–720; R. 16; GC 27, 37.)

The parties also discussed the union security clause. Respondent stated that if people wanted to voluntarily give dues money to the Union that was fine, but that the company believed union membership should not be a condition of employment. At no time did Respondent present any business justification for its position. (Tr. 729–731; GC 37.)

10. January 4, 2017 bargaining session

The parties held another bargaining session on January 4, 2017. At this meeting Respondent proposed that decisions regarding layoffs would be made based on job classification seniority. Otherwise, seniority related decisions were subject to the employer's discretion, with seniority only being used to break a tie if all else was equal. The parties reached an agreement that employees would continue to receive 5 days of sick leave, as set forth in the existing CBA. The employer made a written offer increasing its wage proposal 10 cents over the previous written proposal submitted on December 13, 2016. (Tr. 699, 700, 706; R. 16, 18; GC 38)

C. The June 2016 Decertification Petition

Another decertification petition was filed on June 30, 2016. This petition was filed by Ranjeel Singh, who had worked at the hotel for about 3 years. At the time he was working as a front desk attendant, and reported directly to Nazeem. The 8(a)(1) allegations in the Complaint involve what Respondent allegedly told some of the employees who signed the petition, and how their signatures supporting the petition were collected. The General Counsel and Respondent presented widely divergent evidence regarding these allegations. (Tr. 820–821; GC 3, p. 39)

1. The General Counsel's case

a. Discouraging employees from supporting the Union

The General Counsel presented evidence that, as soon as Respondent took over the hotel, it tried to discourage employees from supporting the Union. Vanessa Abel (Abel), who was hired by the Holiday Inn Express on April 4, 2016, as a housekeeper, testified that a few days before being hired she was interviewed by Nazeem, Nand, and Gutierrez.¹¹ According to Abel, at this interview Nazeem and Gutierrez told her not to

¹⁰ See *Thompson v. Big Lots Stores, Inc.*, 2017 WL 590261, at *4 (E.D. Cal. 2017) (noting that, for employers with 26 or more workers, the minimum wage in California increased to \$10.50 per hour on January 1, 2017, and will increase to \$11 per hour on January 1, 2018.).

¹¹ Abel was injured on the job in May 2016. (Tr. 101.) As of the date of the hearing, while she was still officially employed by the hotel, she had not physically worked at the Holiday Inn Express since her injury. (Tr. 101–103, 880.) Abel's first language is Tagalog, however she testified in English. (Tr. 150.)

join the Union, and that if she did the Union was going to get some money from her salary. (Tr. 119–111; R. 11.)

Abel further testified that, “every day,” Gutierrez would tell her “don’t join the Union.” Abel kept her lunch in Gutierrez’s office, and testified that Gutierrez would discuss the Union with her when she would retrieve her lunch. Sometimes Gutierrez would tell her not to eat downstairs during her break because Gutierrez did not want Abel to meet with the Union and its supporters; so Abel would eat in one of the hotel rooms instead. Also, on one occasion, Gutierrez told Abel not to speak with Rak, referring to him as “the tall man.” (Tr. 111–114, 142–143.)

Suhad Salman (Salman) worked as a housekeeper at the Holiday Inn Express from April 1, 2016, until July 15, 2016.¹² Salman testified that she first learned about the Union a month after she started working at the hotel.¹³ Her colleagues explained to her that the Union deducted money from her salary and in return she would receive benefits. (Tr. 26, 62, 65, 67.)

Salman testified that on May 9, she had a conversation with Gutierrez in her office sometime between noon and 12:30 p.m. Gutierrez told Salman not to sign any documents given to her by Tapia.¹⁴ Gutierrez also told her the Union would deduct money from her salary to provide her with benefits, but that Salman already received her benefits from public assistance.¹⁵ Salman replied saying she would not sign anything, and that since she received assistance from the government she did not want the Union taking money from her check in return for benefits. (Tr. 35–37, 66, 69–70.)

Silvia Arteaga Figueroa (Arteaga) worked at the hotel as a housekeeper from February 2016 through May 2016.¹⁶ Arteaga testified that she first learned about the Union on March 3, 2016. On that day, as she was ending her workday, she exited the bathroom to find Gutierrez waiting for her. Gutierrez told Arteaga that, if any of her coworkers invited her to join the Union, not to go with them. Arteaga replied that she did not know what a union was, and Gutierrez said she would explain later. In fact, Arteaga’s coworkers had gathered outside with Tapia, as they were having a union meeting that day. After speaking with Gutierrez, Arteaga left; outside she told Tapia

and her coworkers what Gutierrez had said. (Tr. 152–153, 164–167.)

b. The decertification petition

Paragraph 6 of the complaint alleges that Respondent violated Section 8(a)(1) of the Act by soliciting employees to sign a petition to decertify the Union. In support of this allegation, three employees testified that Respondent was, in some way, responsible for their signatures on the petition.

(i) Signature of Silvia Arteaga

Arteaga signed the petition on May 9, 2016, and is the first signature on the document. On that day, Arteaga testified that Gutierrez instructed her to go to Nand’s office for training. Present in the office were Arteaga, Nand, and Gutierrez. Nand spoke in English, while Gutierrez translated into Spanish. Gutierrez told Arteaga that she was there for training, and asked her some questions such as whether she had worked at a hotel before, if she knew how to service a hotel room, and could avoid workplace injuries. After the questions, they gave Arteaga the petition and told her to sign it. Arteaga, who does not read or write English, signed the document. At the hearing, she specifically identified the petition as the document Nand and Gutierrez gave her to sign. (Tr. 154, 167–171, 182, 184; R. 24.)

Arteaga left the meeting, while Gutierrez kept the signed petition. Later that day, Gutierrez told two coworkers what had occurred, and that she was told to sign a document. A few days later, Tapia learned about the incident and told Arteaga that she had a right to get a copy of the document she had signed. Arteaga went with coworker Maria Vidal to Gutierrez’ office, where Gutierrez was present with Nand. Arteaga asked Gutierrez for a copy of the document she had signed. Gutierrez became upset and told Vidal to leave. She then told Arteaga that she was not going to give her a copy of the document and that if she wanted to be in the Union she would not intrude. Arteaga then left, without a copy of the paper. (Tr. 172–175, 365; GC 3, p. 40.)

At some point, Arteaga told Tapia she could not get a copy of the document, and Tapia said she would request the paper from the company. Tapia asked Nand provide her with a copy of the document that Arteaga had signed. In reply to this request, on June 2, 2016, Tapia received an email from Nand with a copy of a human rights training acknowledgement form signed by Arteaga. While form is signed by Arteaga, it was dated by Nand; the date reads 2/21/16.¹⁷ (Tr. 366–370, 478–479, 542–543; GC 10, 33.)

(ii) Signature of Vanessa Abel

On May 10, 2016, Vanessa Abel received a phone call from Gutierrez at 7:20 a.m., asking her to come into work early. When Abel arrived at the hotel, she went straight to Gutierrez’s office and asked her if there was a problem; Gutierrez replied that she just wanted to speak with Abel. Gutierrez then wrote the number “2031” on a piece of paper and told Abel to go to that room and meet Olga Villa, who had a paper that Abel

¹² Salman, whose primary language is Arabic, testified with the aid of a translator. (Tr. 30–31.) Before the hearing opened, I granted the General Counsel’s motion for Salman to testify via live video link, from Cleveland, Ohio. Respondent did not object to Salman testifying via video. (GC 1 (ii); Tr. 12.) All parties were able to view Salman throughout her testimony, and I was able to assess the Salman’s demeanor including her facial expressions and body language.

¹³ During her testimony, at times Salmon referred to the Union as “the company” or the “Nunion.” However, when she did so, it was clear she was speaking about the Union. (Tr. 48.) (Tr. 34, 37, 47, 48, 72.)

¹⁴ Gutierrez referred to Tapia as the “fat woman,” but it was clear to Salman that she was referring to Tapia. (Tr. 36.)

¹⁵ Gutierrez, who does not speak Arabic, would communicate with Salman in English. (Tr. 609.) Indeed, based upon my observation of Salman and her testimony, it was evident that she had a sufficient comprehension of spoken English to understand basic work-related conversations. Also, various supervisors and coworkers testified that Salman could understand and speak basic English. (Tr. 504, 603, 609, 657.)

¹⁶ Arteaga, who speaks Spanish, testified at trial via an interpreter.

¹⁷ As discussed later, someone tried to change the “2” to a “4” so the date on the document would read “4/21/16.”

needed to sign. Gutierrez then said that if Abel did not sign the paper she would be fired. (Tr. 115–117, 120–22; GC 6.)

Abel went to the room and Villa was waiting inside.¹⁸ Villa gave Abel the petition and told her to “sign the papers.” Abel read the petition and signed it. Abel testified that she signed the petition because she did not want to get fired. She asked Villa if she could take a picture of the document and Villa agreed; Abel then took a picture of the petition with her phone. After signing the petition, Villa went back to Gutierrez’ office. Gutierrez told her to clock-in and gave Abel her room assignments for the day. (Tr. 117–128; GC 3, p. 40, GC 7.)

In early June, Abel told Tapia about her conversation with Gutierrez and what occurred regarding the petition. On June 5, Abel sent Tapia a text message containing the picture she took of the petition. Abel’s text to Tapia read, in part “That’s the papers I was force to sign or be fired that day . . . I took a picture when they force me to sign.” (Tr. 129–131, 353–359, 375–378; GC 8–9.)

(iii) Signature of Suhad Salman

Salman and her husband Shaheed Hussein (Hussein) testified about Salman’s signature on the petition and how the signature was rescinded. According to Salman, at around 3 p.m. on May 9, she had a conversation with Gutierrez on the third floor of the hotel, near a utility room where housekeeping employees keep their carts. Gutierrez told Salman that a guy was going to bring her a paper for “no union” and to just sign the document; Gutierrez then left. (Tr. 41–44, 68–71.)

About a minute later, Singh appeared and the pair went into the utility room. Singh told Salman that, if she signed the petition she would not be a member of the Union, but if she did not sign she was a member. Salman said okay, and signed her name. Salman estimated that she signed the petition sometime towards the end of her shift between 3 and 4 p.m. (Tr. 41–44, 56–57, 67–68.)

Salman clocked out that day at 4 p.m., and her husband picked her up from work. As they were driving home, she told Hussein about the paper she signed and said she was concerned because she did not know what the document said. Hussein asked her why she signed, and said he was going to go back to the hotel and find out what the document was about. They drove back to the hotel, and the pair went to the front desk where Hussein asked Singh about the document his wife signed, and asked to see the paper. Singh removed the petition from his jacket, and Hussein told Singh to cancel Salman’s signature until they could find out more about the Union. Singh crossed Salman’s name off the petition, while both Hussein and Salman watched. (R. 21, Tr. 44–45, 86–89; R. 21.)

At his wife’s request, Hussein then asked Singh if he could take a picture of the document to show his friends who had a better understanding of English, to explain it to him. Singh replied saying he could not take a picture because the paper contained the signatures of other workers. Instead, Singh gave them a copy without any signatures; Hussein took a picture of the petition’s blank signature form and they left. Outside the

hotel, the pair stopped to talk with one of Salman’s friends. Then Tapia appeared, introduced herself, and said she worked for the Union. Salman told Hussein to ask Tapia what types of benefits and services the Union provides, which he did. After their discussion with Tapia, Salman and Hussein got into their car and drove home. As they were driving, Salman received a call from Gutierrez; she put the call on speaker so Hussein could also hear. Gutierrez asked Salman why she cancelled her signature, said that the Union would take money from her salary and give her benefits, but she did not need to join them because the government gave her benefits. Salman told Gutierrez that she needed time to find out more information about the Union.¹⁹ (Tr. 47–51, 72, 76, 86–91; GC 4.)

Salman testified that she went to work the next day and Gutierrez and Nazeem both asked her why she cancelled her signature from the petition. She told them that she wanted to get more information about the document, and if it was good for her she would sign it. (Tr. 52–53.)

2. Respondent’s defense.

Nazeem, Nand, Gutierrez, and Singh, all testified as part of Respondent’s defense, generally denying everything that was attributed to them by the General Counsel’s witnesses. Gutierrez and Nand both denied that anyone told Vanessa Abel not to associate with the Union. Gutierrez also denied that she ever told Sylvia Arteaga not to involve herself with the Union, and claims she was not at the hotel the day in question because Thursdays were her day off. Gutierrez also denied ever telling Suhad Salman not to associate with Tapia or the Union. (Tr. 464, 608, 614–615, 626, 633, 652–654.)

a. *The decertification petition generally*

Singh testified that he was the person responsible for the decertification petition, and collected all the signatures, with the help of coworker Olga Villa for Spanish speaking employees. According to Singh, workers did not want the Union as a majority of employees were only receiving the minimum wage. On March 6, 2016, Singh attended a meeting at the hotel where Board agents read a notice to employees relating to the settlement of the November 2015 complaint. At the meeting, Singh testified that he spoke with a Board agent about filing another decertification petition and was told that he could do so in 2 months. According to Singh, the decertification petition process started on May 8, 2016; he denied doing anything in support of the petition before May 8. Nazeem testified that he first heard about the decertification campaign in the middle of March 2016, when an employee spoke to him about it in his office.²⁰ (Tr. 823–230, 827–830, 843, 847–848, 860.)

According to Singh, all of the signatures on the petition were gathered outside the property, near the main hotel entrance on Sixteenth Street, between 3 and 4 p.m. Singh claimed that he walked the hotel’s hallways during his breaks informing coworkers to meet him at the 16th Street entrance to sign the petition. He then stood outside the entrance with signature

¹⁸ Abel knew Villa worked in the laundry; laundry workers do not go to guest rooms as part of their job. (Tr. 108.)

¹⁹ This is an instance where Salman referred to the Union as the “company.” (Tr. 47.)

²⁰ There is an error in the transcript which reads “little of March.” (Tr. 769.) It should read “middle of March.”

forms to gather employee signatures; Singh testified that he printed the signature forms from the NLRB website. Singh gathered signatures on May 8, 9, and 10, between 3 and 4 p.m. To gather signatures, Singh testified that he would step outside at 3 p.m. for about 10–15 minutes, and then again at 4 p.m. (Tr. 850–856.)

After gathering the signatures, Singh filed the decertification petition electronically with the NLRB and provided Nazeem with a copy along with the completed signature forms. Singh testified that it took him three tries to properly file the petition; each time filing the petition online. He first tried on June 7, but the NLRB wanted more information. Notwithstanding, on June 7 Singh gave a copy of the completed signature forms to Nazeem showing which employees supported the petition. About 8 or 10 days later, he tried to file the petition a second time, but again the NLRB needed more information. The final time he tried, on June 30, 2016, the petition was accepted. (Tr. 836–837, 853–854, 874–877; R. 23, R. 25.)

b. Respondent's evidence regarding Sylvia Arteaga

Sing testified that he and Villa gathered Arteaga's signature sometime between 3 and 4 p.m. on May 9, while the pair were standing outside of the hotel property, near the main entrance, waiting to catch employees as they were leaving work. Singh, who does not understand Spanish, testified that Villa spoke with Arteaga, who then signed the petition.²¹ As for gathering Arteaga's signature on the decertification petition, both Gutierrez and Nand claim were not involved, and that the only document they gave Arteaga to sign on May 9 was an acknowledgment regarding the hotel's human rights policy training. (Tr. 493–496, 668–670, 829–833, 860–861)

(i) Respondent's alleged human right's training for Arteaga

The Holiday Inn Express is affiliated with the International Hotel Group (IHG), which requires that affiliated hotels conduct certain training for employees when they are hired, and again annually. One such required training is human rights training, which is part of new employee training and is mandated by IHG to occur within the first 7 days of an employee's hire. (Tr. 456, 467, 470, 514–515, 548; R. 2, 4.)

An IHG examiner came to the Holiday Inn Express for a quality assurance inspection on May 11, 2016; Respondent was notified about the inspection beforehand. On April 26, Nand emailed Gutierrez saying the hotel needed to complete the new hire training logs before the inspector arrived, and needed to conduct human rights training for: Arteaga, Salman, Abel, and Mujtaba Elia. She also noted that Gutierrez' help may be needed to translate for Arteaga. According to Respondent's records, Abel received human rights training on May 4, while the remaining three employees received it on May 9. (Tr. 508–509, 549; R. 3–11.)

Regarding Arteaga, Nand testified that she conducted human rights training with Arteaga on May 9, and Gutierrez translated.²² According to Nand, she did not conduct human rights

training with Arteaga within the first 7 days of her February 2016 hire, as required by IHG directives, because she needed a translator. And, despite the fact Gutierrez is at the hotel every weekday, and the training was estimated to take only 5 to 10 minutes, it took Nand until May 2016 to get Gutierrez "on board" so they could meet with Arteaga for the training.²³ (Tr. 475–476, 521, 606.)

According to Nand, at about 2 p.m. on May 9 she called Gutierrez telling her they were going to conduct human rights training for the newly hired workers, and asked her to first send Mujtaba Elia to Nand's office. Nand testified that she completed the training for Elia, and had him sign an acknowledgement form.²⁴ Next, Nand asked Gutierrez to summons Salman to the office. Nand conducted the training for Salman, and had her sign an acknowledgment. However, it was Nand who dated the document. (Tr. 522–528; R. 9, 16.)

Nand then asked Gutierrez to come to the office with Arteaga, as Nand needed Gutierrez to translate. Nand testified that she read the human rights policy while Gutierrez translated to Arteaga in Spanish; Nand does not speak Spanish. When the training was completed, Arteaga signed the acknowledgment, but did not date the paper. Gutierrez then said she wanted to see Arteaga in her office next door about a lost-and-found incident, and wanted Nand to be a witness.²⁵ Nand set the document aside, and the three went to Gutierrez' office, which was directly next door to Nand's. In Gutierrez' office, Nand and Gutierrez claim to have given Arteaga a verbal warning about a lost and found incident. (Tr. 476–480, 524–526, 634–635, 667–669)

Regarding the human rights training acknowledgment, Gutierrez testified that Arteaga signed the paper but did not date it. According to Gutierrez, Nand was the one who dated the document, but Gutierrez was not present when she did so. (Tr. 681–682.)

(ii) Arteaga's human rights training acknowledgment

The record contains two versions of the human rights training acknowledgment signed by Arteaga. One is dated "2/21/16," however an attempt was made to change the "2" to a "4" so the date would read "4/21/16."²⁶ The second version is identical to the first, but the original date is crossed out, and a new date – "5/9/16" is printed on the document with the words "wrong date." Nand admitted that she was the one who dated both documents. Nand testified that, sometime in June 2016, she crossed out the original date, printed "5/9/16" on the docu-

²³ I do not credit Nand's hearsay testimony that Arteaga was unsure whether she was going to continue working at the hotel because she was finding the work difficult. (Tr. 522.)

²⁴ While the form was signed by Elia, it appears it was dated by Nand as the date is virtually identical to that on Abel's acknowledgment. Also, Nand testified that if an acknowledgment is not dated, she fills in the date herself. (Tr. 523; R. 7; R. 8.) (Tr. 519.)

²⁵ Respondent introduced training "logs" which are completed by Nand (R. 8 – Salman); (R. 6 – Elia); (R. 4 – Arteaga); (R. 11 – Abel). Nand testified that she is the one who fills in all of the logs; other than her testimony, there was no other evidence introduced to show these logs are accurate. (Tr. 498.)

²⁶ Nand testified that she "believed" the original date on the document is 4/21/16 and not 2/21/16. (Tr. 479–480.)

²¹ Olga Villa did not testify at the hearing, even though she was still employed at the hotel. (Tr. 880.)

²² Gutierrez testified that she was present as a translator at this meeting. (Tr. 633–635, 680–682.)

ment, and added the words “wrong date.” (Tr. 478–481; GC 5, 10, R. 5)

According to Nand, she made an “honest mistake” by putting the original date on the acknowledgment. She did not remember exactly when she wrote the date, but “estimated” the original date, instead of May 9, and then laid the document aside in a pile of paperwork.²⁷ Nand testified that Tapia called her and asked for the document Arteaga signed regarding a training she completed. So on June 2, Nand emailed the signed acknowledgment, containing the original date to Tapia. Then, sometime later that month, she crossed out the original date, and wrote “5/9/16” on the document along with the words “wrong date.” (478–481.)

(iii) Respondent’s evidence regarding Suhad Salman

Singh testified that he collected Salman’s signature on May 9, near the Sixteenth Street entrance sometime between 3 p.m. and 4 p.m. According to Singh, earlier that afternoon, he spoke to Salman in the hallway of the hotel telling her that, if she did not want the Union, all she had to do was sign the petition.²⁸ (Tr. 834, 862–863.)

Singh initially testified that, after Salman signed the petition, she returned to the hotel at about 4:30 p.m. while Singh was working at the front desk. At that point, Hussein approached Singh, introduced himself as Salman’s husband, and asked Singh about the document his wife had signed. Singh started to retrieve the paperwork from his coat pocket and explain the petition. However, according to Singh, Hussein was aggressive, and wanted to tear-up the petition. Singh testified that, using the front desk computer, he printed the “petition paperwork” from the NLRB website and handed it to Hussein. And, because he was “aggressive,” Singh crossed out Salman’s name while Hussein watched. Singh denied that Hussein took a picture of the paperwork, but instead claims that Hussein took the document with him. Although he initially testified that Salman, herself, returned to the hotel at 4:30 p.m., Singh later testified that Salman was not present during his interaction with Hussein. Singh denied ever telling Gutierrez about his dealings with Hussein. (Tr. 834–835, 864–866.)

Regarding the telephone call that occurred after Salman’s signature on the petition was rescinded, Gutierrez testified that Salman first initiated the phone call. According to Gutierrez, she left work that day at 3:30 p.m., and was at home when she received a missed call from Salman. Gutierrez returned the call at about 5 p.m. Salman told Gutierrez that she was at home, and that Hussein wanted to speak with her. Hussein then got on the phone and demanded to know why Salman never worked 2 consecutive days. Gutierrez tried to explain that Salman was lowest on the seniority list, and therefore received whatever shifts were available. However, Hussein kept repeating his request, saying Salman’s schedule was “no good.” Gutierrez

testified that Hussein then said that Salman was a good worker, and she planned to quit. Gutierrez denied that the issue of the petition was ever discussed in this conversation. She also denied having any knowledge of what occurred between Singh and Hussein that day. Finally, Respondent introduced Salman’s timecard into evidence which showed that, during the week of May 8 through May 14, 2016, she worked every day except for May 10. (Tr. 615–621, 654–659; R. 21.)

(iv) Respondent’s evidence regarding Vanessa Abel

Gutierrez denied arranging for Abel to meet with Olga Villa to sign the decertification petition. She also claimed the slip of paper with the number “2031” was not in her handwriting. To support this claim, at hearing Respondent had Gutierrez write the number “2031” three times on a piece of paper, and introduced the document into evidence, along with another document in her handwriting. Conversely, the General Counsel introduced the signature page of an affidavit that was admittedly dated by Gutierrez.²⁹ (Tr. 627–628, 642; R. 14, 15, GC 35)

Singh initially testified that he collected Abel’s signature between 3 and 4 p.m. on May 10, outside the hotel near the Sixteenth Street entrance with Villa’s help. However, when asked by the General Counsel to explain the details of how Abel signed the petition, Singh testified that “Sanjita [Nand] was again taking it on the 16th [sic] by the main entrance.” In the next breath, he then stated that “I think I was alone over there.” (Tr. 833–834, 848, 867.)

Singh further explained that, during the morning of May 10, he saw Abel in the hallway of the hotel, and told her to meet him at the main entrance to sign the petition if she wanted to get rid of the Union. Abel told Singh that she was willing to sign and wanted to see the paperwork. Singh told her that he could not solicit her signature “right now,” but he showed her the petition and Abel asked to take a picture of the document. Singh did not have a problem with the request, and Abel took a picture of the petition—before she had signed it. When asked again whether Abel had signed the petition before taking a picture of the document, Singh testified “No. Sanjita [Nand] was taking it on [sic] the 16th Street.” Then, later in the day, around 3 or 4 p.m., Singh testified that Abel went out to the Sixteenth Street entrance and signed the petition. (Tr. 867–870.)

III. CREDIBILITY

Based upon the demeanor of the witnesses, I credit the testimony of Suhad, Arteaga, Abel, Hussein, and Tapia over that of Singh, Gutierrez, Nand, and Nazeem as to what occurred and what was said on the various relevant dates. Along with my assessment of demeanor, there are other aspects of the testimony of Respondent’s witnesses that generally detract from their credibility.

A. Testimony of Ranjeel Singh About the Petition

Singh, who Respondent asserts was responsible for the efforts behind the June 2016 decertification efforts, testified that the petition process started on May 8, 2016. However, Nazeem

²⁷ Regarding Abel’s training acknowledgment dated “5/4/16,” Nand admitted the date also appeared to be in her handwriting, but Nand did not know when she actually dated the document. (Tr. 519; R. 10.) She similarly did not recall when the dates were placed on the acknowledgments for Salman and Elia. (Tr. 527–530; R. 7, 9.)

²⁸ According to Singh, Salman was speaking English, and she “definitely” understood Singh (Tr. 862.)

²⁹ Ultimately, I find that the handwriting exemplars are inconclusive.

admitted that he heard about the decertification campaign in March 2016. Singh's testimony about collecting Abel's signature also does not comport with the documentary evidence. Specifically, Singh testified that he discussed the petition with Abel the morning of May 10, and that Abel took a picture of the petition before she had signed the document. According to Singh, he told Abel she could not sign the petition at the time; so she took a photo of the unsigned document and then signed the petition later in the day outside the hotel. However, the photograph that Abel actually took of the petition contains her signature. (Tr. 769, 827–828, 869–870; GC 7.)

I also find it telling that, when discussing the solicitation of employee signatures on the decertification petition, Singh twice stated that Sanjita Nand was involved. Although he made these comments in connection with Abel's signature instead of Arteaga's, I find this testimony is significant, and supports a finding that Singh in fact knew that Nand was involved in soliciting employee signatures on the petition. (Tr. 867–868; R. 24.)

Finally, Singh testified he printed out the blank petition signature forms from the NLRB website. However, it is evident from reviewing the documents that these are not official NLRB forms, as they contain no form number.³⁰ (Tr. 835, 853.)

B. Testimony of Gutierrez About Damon Griffin and Suhad Salman

Gutierrez' testimony regarding the interaction between Damon Griffin and Suhad Salman showed Gutierrez' desire to contour her testimony to fit what she believed would assist Respondent's case. Griffin, who worked as houseman stocking linen closets with supplies, had a run-in with Salman on May 9. They were working together in a hotel room and Salman, who was dissatisfied with the pace of Griffin's work, called him lazy. Griffin perceived the comment as racist and reported the incident to Gutierrez—who told him to report it to Nazeem. Later, in the basement laundry, Salman again started complaining that Griffin was working slowly and again called him lazy. Griffin met with Nazeem and Gutierrez at 12:30 p.m. that day, and signed a written statement saying that Salman told him to “move faster and she said, ‘people like you are lazy.’” Respondent claims that Salman received a “verbal warning” about the incident, as “per the collective bargaining agreement.” (Tr. 555–556, 562, 586, 591–594, 599–600, 680, 766; R. 13.)

During her testimony about the incident, Gutierrez stated that, when Griffin came to her to complain about Salman, he told her that Salman called him lazy “and he also told me that she called him black.” (Tr. 622.) However, nowhere in Griffin's testimony or his written statement does he ever claim that Salman called him “black,” or otherwise commented specifically about his skin color. This is but one more example of how Gutierrez exaggerated her testimony to conform to what she believed was in the Respondent's best interest, and generally detracts from her credibility.

³⁰ Compare R. 24 with the various official agency forms, all of which contain official form numbers, available at: <https://www.nlrb.gov/resources/forms>. (last accessed on September 5, 2017).

C. Testimony of Respondent's Witnesses about Verbal Warnings

The various testimony about “verbal warnings” also detracted from the credibility of Respondent's witnesses. In an attempt to attack the veracity of various employee witnesses, Respondent's witnesses testified that these employees had received verbal warnings for certain infractions. However, rather than diminishing the veracity of the employee witnesses, much of this testimony was contradictory and undermined the credibility of Respondent's witnesses.

For example, both Gutierrez and Nazeem testified that a verbal warning is the first step in the disciplinary process, followed by a written warning as per the collective-bargaining agreement. However, the CBA does not mention verbal warnings anywhere. Both Gutierrez and Nazeem testified that employees first get a verbal warning and then a written warning for the next similar infraction. However, Nand testified Respondent's progressive disciplinary policy consists of three verbal warnings, two written warnings, a suspension, and then termination.³¹ (Tr. 500–501, 680–681, 766, 799, 809; GC 3, p. 3.)

Also, Nazeem changed his testimony at least three times regarding whether Respondent tracks verbal warnings. When asked how he knows whether somebody had previously received a verbal warning, Nazeem initially testified that he “just would remember.” However, he then testified that Respondent keeps a written list of people who receive verbal warnings, and that this list is maintained by Nand in the human resources office.³² When I brought to Nazeem's attention his previous testimony, he said that his initial testimony was correct, and that no written records of verbal warnings are kept. However, he later testified that he does, in fact, keep a list of names of people who received verbal warnings, and that this list is kept in his office, not Nand's. This contradictory and confusing testimony about verbal warnings detracted generally from the credibility of Nand, Gutierrez and Nazeem. (Tr. 766, 796–798.)

D. Nand's Testimony About the Date of Arteaga's Training Document

Nand's testimony about the various dates on Arteaga's human rights training form was simply not credible in various respects, and undermined her credibility generally. It is clear from the document itself that the original date is “2/21/16.” And since Arteaga was hired on February 18, 2016, this date comports with IHG's requirement that human rights training be conducted within the first 7 days of employment. Thus, I do not credit Nand's testimony that she believed she initially dated the document as April 21, 2016. Instead, before Nand sent the document to Tapia in June 2016, an attempt was made to change the “2” to a “4.” Then, after sending the document to

³¹ Although all of Respondent's management employees insisted they follow the CBA, the agreement does not delineate progressive discipline. Instead, it sets forth the standards for issuing a written warning, and says the employer can terminate, suspend, or discipline employees for just cause. (GC 3, p. 20)

³² When asked if Respondent keeps track of an employee's first verbal warning in an employee's personnel file, Nand testified “No.” (Tr. 530)

Tapia, again at some unknown later time, Nand crossed out the original date, wrote the words “wrong date,” and put a new date “5/9/16.” This new date better comports with Respondent’s evidence that the document signed by Arteaga during her May 9 meeting was the human rights policy, and not the decertification petition; evidence that I do not credit.³³ Further I do not believe Nand’s claim that she waited almost 3 months to give Arteaga human rights training because Gutierrez was not available until May 9. The training was admittedly short, lasting no more than 10 minutes. Gutierrez is at the hotel every weekday, and if Arteaga’s training log is to be believed, all of the other mandatory new employee training for Arteaga was completed in February. The testimony from Respondent’s witnesses about this issue was simply not credible. (Tr. 514–515) (Tr. 470, 514–515, 548; R. 2, 4, 5; GC 10.)

IV. ANALYSIS

A. 8(a)(1) Violations

1. Instructing Vanessa Abel to not join the Union during her interview

A few days before she was hired in April 2016, Abel was interviewed by Nazeem, Nand, and Gutierrez. Nazeem and Gutierrez told her to not join the Union, and if she did so the Union was going to take some money from her salary. The General Counsel alleges that this statement violated Section 8(a)(1) of the Act.

At the hearing, Respondent argued that this allegation “makes no sense” because the CBA contained a union security clause making union membership mandatory. (Tr. 460–461; GC 3, p. 22.) Indeed, pursuant to the CBA employees are required to become union members after 30 days of employment. That being said, Respondent was actively soliciting employee signatures to decertify the Union in the hopes that it would no longer represent employees. Thus, it does “make sense” that Respondent would encourage new employees to avoid joining the Union, as it fit the company’s aspirations to eliminate any bargaining obligation. Telling an employee during a pre-hire interview that they should not join the union constitutes an 8(a)(1) violation, as it sends a message that the new hire should avoid joining the union if she wishes to remain on good terms with management.³⁴ *Clear Pine Mouldings*, 238 NLRB 69, 72,

³³ Because the dates on the various training logs and human rights training forms were completed by Nand, and she admitted that she basically guessed when writing down the dates on the acknowledgments, I find the veracity of these dates is suspect regarding the actual date human rights training was completed. And, because I generally do not credit Gutierrez or Nand, there is no other independent evidence that human rights training occurred on May 9. Neither Arteaga, Salman, nor Abel were asked about the date they signed their human rights training document or when they took human rights training. Further, there is no explanation why Abel purportedly received her training on May 4, when everyone else who required the training allegedly received it on May 9. (R. 5, 7, 9, 10.)

³⁴ As noted by the Ninth Circuit, it is “reasonable to infer coercion when a personnel manager urges a prospective employee not to join the union,” and the “absence of express threats by the company does not alter that conclusion.” *Clear Pine Mouldings, Inc. v. NLRB*, 632 F.2d 721, 726 (9th Cir. 1980). See also *Eddyleon Chocolate Co., Inc.*, 301

77 (1978), *enfd.* 632 F.2d 721 (9th Cir. 1980), *cert. denied* 451 U.S. 984 (1981). That message, if successful, also prevents the union from obtaining a new member, which would tend to make negotiations more difficult. *Id.* And here, if successful, that message would assist Respondent’s scheme to jettison its bargaining obligation. Accordingly, I find that Respondent violated Section 8(a)(1) by telling Abel during her interview to not join the Union.

2. Elsa Gutierrez and Sanjita Nand soliciting employees to sign the decertification petition

An employer violates Section 8(a)(1) of the Act “by actively soliciting, encouraging, promoting, or providing assistance in the initiation, signing, or filing of an employee petition seeking to decertify the bargaining representative.” *Mickey’s Linen & Towel Supply, Inc.*, 349 NLRB 790, 791 (2007) (internal quotations omitted), *enfd.* sub nom. *NLRB v. R.T. Blankenship & Assocs., Inc.*, 210 F.3d 375 (7th Cir. 2000) (table); *Enterprise Leasing Co. of Florida v. NLRB*, 831 F.3d 534, 544–545 (DC Cir. 2016). In deciding whether an employer’s conduct is unlawful, the test is whether the conduct constituted more than “ministerial aid.” *Id.* (citing *Times Herald, Inc.*, 253 NLRB 524, 524 (1980)). And in making this inquiry, all the surrounding circumstances are considered “to determine whether the ‘preparation, circulation, and signing of the petition constituted the free and uncoerced act of the employees concerned.’” *Id.* (quoting *Eastern States Optical Co., Inc.*, 275 NLRB 371, 372 (1985)).

Here, the credited evidence shows that on May 9, under the guise of conducting “training,” Nand and Gutierrez presented the decertification petition to Arteaga and told her to sign the document; Arteaga, who does not read or write English, complied. Under these circumstances, it cannot be argued that Arteaga’s signing of the petition constituted a free and uncoerced act. Thus, the conduct of Nand and Gutierrez violated Section 8(a)(1) of the Act. *Placke Toyota, Inc.*, 215 NLRB 395, 395 (1974) (“[A]n employer’s solicitation, support, or assistance in the initiation, signing, or filing of an employee decertification petition interferes with the employees’ Section 7 rights.”); *Texaco, Inc. v. NLRB*, 722 F.2d 1226, 1234 (5th Cir. 1984) (Employer violates Section 8(a)(1) when it “participates in the circulation of anti-union documents.”).

Also on May 9, Gutierrez told Salman that a man was going to bring a paper for “no union” and to sign the document. Singh then appeared with the petition, telling Gutierrez if she signed the document she would not be a member of the Union, but if she did not do so, she was a member; Salman signed her name. I find Gutierrez’ directing Salman to sign the “no union” paper went beyond providing “ministerial aid, and constituted a violation.”³⁵ *Sociedad Espaniola De Auxilio Mutuo Y Benefi-*

NLRB 887 (1991) (a violation to ask applicant to pledge in writing that she would not join a union, notwithstanding the fact the applicant was never presented with a document to sign).

³⁵ I also note that Salman’s interaction with Gutierrez and Singh did not occur in a coercive free context. Gutierrez previously had told Salman that the Union takes money from her salary to provide her benefits, but that Salman already received her benefits from public assistance. I find this statement was intended to encourage Salman’s

cencia De P.R., 342 NLRB 458, 459, 471 (2004) (violation where supervisor called employee into her office and asked her to sign decertification petition); *Warehouse Market, Inc.*, 216 NLRB 216, 221 (1975) (finding a violation where supervisor encouraged employees to sign decertification petition); *Inter-Mountain Dairymen*, 157 NLRB 1590, 1612–1613 (1966) (violation where decertification petition was left on supervisor's desk, and supervisor proffered the document to some employees for perusal, telling them it was a petition for another vote).

Finally, by directing Abel to meet with Olga Villa, and saying Abel would be fired if she did not sign the paper Villa gave her, Gutierrez provided unlawful assistance to the decertification effort, and also unlawfully threatened Villa with discharge if she did not comply with Gutierrez's directives. *NLRB v. Proler International Corp.*, 635 F.2d 351, 354–355 (5th Cir. 1981) (Section 8(a)(1) “makes it unlawful for an employer to instigate and promote a decertification proceeding or induce employees to sign any other form of union-repudiating document, particularly where the solicitation is strengthened by the express or implied threats of reprisal or promises of benefits.”); *Davies Medical Center*, 303 NLRB 195, 200–201 (1991), *enfd.* *NLRB v. Davies Medical Center*, 991 F.2d 803 (9th Cir. 1993) (table) (violation where supervisor arranged for employee to meet with coworker who then solicited signature on decertification petition); *Fritz Companies, Inc.*, 330 NLRB 1296, 1300 (2000) (violation where supervisor threatened employee with discharge if he did not support decertification of the union).

3. Solicitations by Rajneel Singh and Olga Villa

The complaint also alleges that Singh and Villa were agents of Respondent, and therefore further 8(a)(1) violations occurred when they solicited Salman and Abel to sign the decertification petition. I agree.

The Board found just such a violation in *Davies Medical Center*, 303 NLRB 195, 206 (1991), and the decision was enforced by the Ninth Circuit. *NLRB v. Davies Medical Center*, 991 F.2d 803, 1993 WL 117519, (9th Cir. 1993) (table). In *Davies Medical Center*, the Board found that two rank-and-file employees, Elizabeth Santos and Betty Lerias, were agents of their employer when they solicited employees to sign a decertification petition, and therefore the solicitations violated Section 8(a)(1) of the Act. *Id.* at 206–207. Regarding the signature solicited by Santos, an admitted supervisor named Ethel Hendy took employee Evelia Tijerino to the laundry to see director of housekeeping Bob Bailey. Santos was in the laundry, and when Bailey arrived, Santos told Tijerino “They want me to talk to you about a union.” *Id.* at 198. At that point Bailey and Hendy left, and Santos spoke to Tijerino about the decertification petition, and ended the conversation saying “they just want me to tell you this.” Tijerino had never met Santos before. *Id.*

Later that month, Hendy instructed Tijerino on multiple occasions to go and see Lerias in the payroll office. *Id.* at 198–199. After two failed attempts, Tijerino eventually found Lerias who showed Tijerino the decertification petition and said she wanted to talk to Tijerino about the Union. Lerias said that,

disaffection from the Union. And it was reinforced when Singh told Salman if she did not sign the petition she was a member of the Union.

if Tijerino wanted to be out of the union, she had to sign the paper, that a lot of people had signed, and if they got enough signatures they could “take the union out of the hospital.” *Id.* at 199. Lerias ultimately told Tijerino to “think about it. We’re not forcing you,” and to return if she wanted to sign the document. *Id.* That was the first time Tijerino had spoken to Lerias. *Id.* Later, Hendy also instructed another employee, Felix Ramirez, to meet with Lerias; once there, Lerias solicited his signature on the decertification petition. *Id.*

The Board affirmed the trial judge who, applying the concept of apparent authority, found that Santos and Lerias were agents of the employer when they solicited the signatures of Tijerino and Ramirez. *Id.* As the Ninth Circuit noted, when it enforced the Board's decision, “[u]nder agency law, the question of apparent authority is whether the principal engages in, or condones conduct which is reasonably likely to create the belief that the employees were authorized to act on behalf of the principal.” *Davies Medical Center*, 1993 WL 117519 at *3. Applying this standard, the Board “concluded that in the eyes of Tijerino and Ramirez, Hendy's and Baily's actions conferred apparent authority on employees Santos and Lerias.” *Id.* In making this finding, the Ninth Circuit noted that the Board relied upon the fact both Hendy and Baily directed Tijerino to talk to Santos, and that Hendy directed both employees to see Lerias for the purpose of Lerias soliciting their signatures on the decertification petition. The employees were not told that Lerias had no supervisory or other authority, the meeting was arranged as part of an official work request from their supervisor, and the employees did know Lerias's function either on the job or in relation to the antiunion petition. *Id.*

I find that the circumstances here are sufficiently similar to find that Villa and Singh were agents of Respondent within the meaning of Section 2(13) of the Act, and that their conduct constituted a violation of Section 8(a)(1) for which Respondent is liable. Gutierrez called Abel, telling her to come to work early. When she arrived, she ordered Abel to a particular room and told her to meet Villa who had a paper that Abel needed to sign, and if she did not do so she would be fired. When Abel went to the room where Villa was waiting with petition; Villa then told Abel to sign the papers. Although Abel knew Villa worked in the laundry, there is no evidence that Abel knew about Villa's function in relation to the petition, and Abel was never told that Villa had no specified authority. Under these circumstances, I find that it is reasonable to conclude that, in Abel's eyes, Gutierrez' actions conferred apparent authority upon Villa, and that Abel felt compelled to sign the petition when Villa told her to do so. Indeed, Abel testified that she signed the document because she did not want to get fired.

The same is true regarding Salman. During work, Gutierrez told Salman that a man was going to bring her a paper for “no union,” and to sign the document. A minute later, Singh appeared with the petition, telling Salman if she signed the petition she would not be a member of the Union, but if she did not sign she was a member. The situation here is similar to Tijerino's meeting with Lerias, who told Tijerino that if she wanted to be out of the union to sign the petition. *Davies Medical Center*, 303 NLRB at 199. Gutierrez instructed Salman to sign the petition, and never told Salman what authority Singh did, or did

not, possess. Indeed, there is no evidence that Singh and Salman had ever talked with each other before this encounter. As such, I find it reasonable that Gutierrez' conduct created the belief that Singh was authorized to act on behalf of Respondent. Accordingly, I find that Respondent further violated Section 8(a)(1) of the Act when Singh and Villa, as Respondent's agents, solicited Abel and Gutierrez to sign the petition.

4. Elsa Gutierrez' statement to Suhad Salman about Roxana Tapia³⁶

On May 9, during a conversation in Gutierrez' office, Gutierrez told Salman not to sign any documents given to her by the "fat woman;" it was clear to Salman that Gutierrez was referring to Union Representative Tapia. She then explained to Salman that the Union deducts money from her paycheck in return for benefits, but that Salman already receives benefits from public assistance. Salman replied that she would not sign anything. She said that, because she received assistance from the government, she did not want the Union taking money from her paycheck in return for benefits.

I find the conversation here goes beyond the acceptable parameters of Section 8(c), and is indeed coercive. The Supreme Court's admonition in *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 620, (1969), about the employer/employee relationship, although made in a different factual setting, is equally applicable here:

But an employer, who has control over that relationship and therefore knows it best, cannot be heard to complain that he is without an adequate guide for his behavior. He can easily make his views known without engaging in "brinkmanship" when it becomes all too easy to overstep and tumble over the brink. At the least he can avoid coercive speech simply by avoiding conscious overstatements he has reason to believe will mislead his employees. (Internal quotations and citations omitted.)

Gutierrez falsely equated the benefits provided by the Union to those that Salman received from public assistance in order to purposely mislead Salman to refrain from union membership. In context, Gutierrez was telling Salman that she did not need the Union because Salman was already receiving the same benefits that union membership provided for free from the government. Salman, whose primary language was Arabic and was unsophisticated in such matters, could reasonably rely upon her employer to honestly explain the benefits received in return for the union dues deducted from her paycheck. Thus, I find Gutierrez's purposely false and misleading statement was coercive, and a violation of Section 8(a)(1) of the Act.

³⁶ Complaint par. 10(a)(iv) alleges this conversation occurred in the area of the hotel where employees record their work hours; the evidence shows the conversation occurred in Gutierrez' office. Any minor variations between the evidence and the complaint allegation regarding the date or location of the conversation are immaterial, *Fraser & Johnston Co.*, 189 NLRB 142, 150 (1971), as this matter was fully litigated. *Park N Fly, Inc.*, 349 NLRB 132, 133 (2007) (citing *Pergament United Sales, Inc.*, 296 NLRB 333, 334 (1989)).

5. Elsa Gutierrez' statement to Silvia Arteaga³⁷

On March 3, 2016, employees were gathering outside the hotel with Tapia for a union meeting. As Arteaga was ending her workday, Gutierrez told Arteaga not to go with her coworkers if she was invited to join the Union. Arteaga replied that she did not know what a union was, and Gutierrez said that she would explain later. Outside, Arteaga told Tapia and her coworkers what Gutierrez had said. The General Counsel alleges that Gutierrez's instructions violated Section 8(a)(1) of the Act; I agree.

In *Keystone Lamp Manufacturing Corp.*, 284 NLRB 626, 634-635 (1987), the Board found a violation where a representative of the employer asked an employee, as a personal favor, to "please stay away from the union meetings." The Board's decision was enforced by Eighth Circuit. *Keystone Lamp Mfg. Corp. v. NLRB*, 849 F.2d 601 (3d Cir. 1988), cert. denied 488 U.S. 1041 (1989). Here, Gutierrez' statement was much more direct than the "personal favor" in *Keystone Lamp*, and thus even more coercive. As such, I find that Respondent violated Section 8(a)(1) of the Act as alleged.

6. Alleged threat of unspecified reprisals against Silvia Arteaga³⁸

The General Counsel alleges that Respondent threatened Arteaga with unspecified reprisals when she asked Gutierrez for a copy of the document she had signed, and Gutierrez told her to leave. (GC Br., at 75-76.) After she was duped into signing the petition, Arteaga and her coworker Maria Vidal went to Gutierrez's office and asked for a copy of the document. Gutierrez became upset and ordered Vidal to leave. She then told Arteaga she was not going to give her a copy of the document, and that if Vidal wanted to be in the Union she would not intrude. The General Counsel does not cite any precedent where, under similar circumstances, either the Board or the courts have found a threat of unspecified reprisals. Instead, the government cites cases for the generalized proposition that innocent words, "uttered in circumstances where the employees could reasonably conclude that the employer was threatening them with economic reprisals," can constitute an illegal threat. *Concepts & Designs, Inc.*, 318 NLRB 948, 954 (1995) (internal quotation omitted). The problem for the General Counsel is that in these circumstances, the words Gutierrez used cannot reasonably be concluded to constitute a threat. Although Gutierrez was upset, ordered Vidal to leave, and would not give Arteaga the paper, she told Arteaga that she would not intrude if Arteaga chose to join the Union. There was no threat, either direct or implied, that Arteaga would suffer economic reprisals by joining the Union. As such, I recommend this allegation be dismissed.

³⁷ This allegation is contained in complaint paragraph 10(a)(i). In its posthearing brief, the General Counsel withdrew that portion of complaint par. 10(a)(i) that alleges Respondent threatened employees that the company had a plan to get rid of the Union.

³⁸ This allegation is contained in complaint par. 10(a)(vi). In its posthearing brief, the General Counsel withdrew that portion of Complaint paragraph 10(a)(vi) that alleges Respondent promised employees they would never be without work if they trusted Gutierrez.

7. Instructing Vanessa Abel not to talk to the Union

Complaint paragraph 10(a)(iii) alleges that, on various dates between April 4 and May 10, 2016, Respondent instructed employees not to talk to union representatives or join the Union, and impliedly threatened employees with discharge for supporting the Union.³⁹ In its brief, the General Counsel moved to amend this complaint allegation by withdrawing the alleged implied threat of discharge, and instead allege an impression of surveillance. (GC Br., 67 at fn. 52.)

In support of these allegations, the General Counsel points to the various statements Gutierrez made to Abel to not join the Union, not eat in the break area so as to avoid meeting with the Union or its supporters, and to not speak with Rak. As set forth above, with respect to complaint paragraph 10(a)(iii), I have already found that Gutierrez' instructions to Abel to not join her coworkers if they invited her to join the Union constitutes a violation of Section 8(a)(1). For the same reason, I find that Gutierrez violated Section 8(a)(1) of the Act when, on various occasions, she told Abel not to join or otherwise associate with the Union. See *Acme Brick Co.*, 102 NLRB 173, 187 (1953) (violation where superintendent told employee that, when he was rehired, he was not to join the union).

As for the General Counsel's request to amend the complaint and allege an impression of surveillance, I grant the amendment and dismiss the allegation.⁴⁰ An employer creates an impression of surveillance when the employee would reasonably assume from the employer's statements that her union activities had been placed under surveillance. *New Vista Nursing & Rehabilitation, LLC*, 358 NLRB 473, 482 (2012). "In general, the Board finds that this test has been met when an employer reveals specific information about a union activity that is not generally known, and does not reveal its source." *Id.* Here, while Gutierrez' statements may have been otherwise coercive, her "statements do not suggest that [s]he acquired [her] knowledge through solicitation or spying." *Carrick Foodland*, 238 NLRB 568, 569 (1978).⁴¹ Therefore, I recommend that the General Counsel's allegation that Gutierrez' words created an impression of surveillance be dismissed.

8. Elsa Gutierrez' telephone conversation with Suhad Salman on May 9.

On May 9, as Salman was driving home, she received a call from Gutierrez; Salman and her husband had just finished speaking with Singh at the hotel, and had crossed Salman's

name off the decertification petition. Gutierrez asked Salman why she cancelled her signature, said that the Union would take her money from her salary and give her benefits, but that she did not need to join them because the government already gave her benefits. Salman replied that she needed time to find out more information about the Union.

The General Counsel alleges that Gutierrez' conversation with Salman constituted an unlawful interrogation in violation of Section 8(a)(1) of the Act.⁴² In determining whether an unlawful interrogation occurred, the Board examines the totality of the circumstances to determine whether the questioning reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act. *Rossmore House*, 269 NLRB 1176 (1984), *affd. sub nom. Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985);

Gutierrez was Salman's direct supervisor, and she was asking specifically why Salman exercised her statutory right to cancel her signature from the decertification petition, factors which support a finding that the questioning was coercive. While the conversation occurred over the phone, and Salman was truthful, Gutierrez never gave a legitimate reason for the inquiry and never assured Salman that no reprisals would follow based upon her answers, which are "also important considerations." *NLRB v. Champion Labs, Inc.*, 99 F.3d 223, 230 (7th Cir. 1996). Moreover, Gutierrez demanded to know why Salman cancelled her signature only hours after she unlawfully told Salman to sign the petition, making the questioning even more coercive. As such, considering the totality of the circumstances, I find that Gutierrez unlawfully interrogated Salman by asking her why she cancelled her signature in violation of Section 8(a)(1) of the Act. *Poly Ultra Plastics, Inc.*, 231 NLRB 787, 789-790 (1977) (unlawful interrogation where employer telephoned rank-and-file employee, during the early stages of an organizing drive, asking if she had signed a union card); *Twin Frocks Co.*, 199 NLRB 750, 752 (1972) (violation where manager asked employee whether he signed a union card, and after learning employee signed, asked him why he did so).

9. Alleged interrogation and impression of surveillance involving Suhad Salman

On May 10, the day after her telephone conversation with Gutierrez about cancelling her signature from the petition, Salman testified that she went to work and both Gutierrez and Nazeem asked her why she cancelled her signature from the petition. Salman stated that she told them she wanted to get more information about the document, and if it was good for her she would sign it. The General Counsel points to this conversation and argues that "Respondent's violated Section 8(a)(1) of the Act by interrogating Salman and creating the

³⁹ Complaint par. 10(a)(iii) also alleges that Respondent promised employees better benefits if they did not support the Union, but in its posthearing brief the General Counsel withdrew this allegation.

⁴⁰ Because the amendment arose from the same set of conversations between Gutierrez and Abel that gave rise to other complaint allegations, and the issue of what was said in these conversations was fully litigated, I find that the amendment was not so late so as to prejudice Respondent. *Folsom Ready Mix, Inc.*, 338 NLRB 1172, 1172. fn. 1 (2003).

⁴¹ Because the General Counsel withdrew the allegation that Gutierrez's statements constituted an implied threat of discharge, there is no need to discuss the allegation. Compare *SKD Jonesville Division, L.P.*, 340 NLRB 101, 101 (2003) (supervisor's statement to employee that "it wasn't in her best interest to be getting involved with the union" constituted an unlawful threat).

⁴² This allegation is contained in complaint par. 10(a)(viii), which also alleged that, during the conversation Gutierrez created the impression of surveillance and impliedly threatened Salman with unspecified reprisals. However, in its posthearing brief, the General Counsel only addresses the issue of interrogation, and appears therefore to have abandoned the other alleged violations. GC Br., at 26-27, 70-71. Notwithstanding, because of the violations found herein, any further violations based upon this short conversation would simply be duplicative.

impression of surveillance on May 10.” (GC Br., at 71.) Respondent argues that no violation occurred, as Salman’s timesheet shows that she was not working on May 10. Instead, her next day back to work was May 11.

Although I have generally credited Salman as a witness, I cannot credit her testimony about this alleged May 10 incident, as her timesheet clearly shows that she was not working that day. While it is possible that Salman was simply mistaken about the date, the General Counsel never recalled Salman to ask her whether this conversation occurred on a later date, as her timesheet showed she was not working on May 10. Instead, in his brief, the General Counsel implies that Salman’s timesheet may have been altered by Respondent. (GC Br., at 72–73.) However there simply is no evidence supporting this claim. The General Counsel also argued that Salman may have been present at the hotel on May 10 notwithstanding the fact she was not working. However, again this is simply conjecture; Salman’s testimony was that she went to work on May 10, the day after she cancelled her signature from the petition, “[y]es, I did, normal . . . [n]o problems there.” (Tr. 51) Finally, the government argues that “even if Salman got the May 10 date wrong, there is no reason not to credit her testimony that after May 9 she was called into Nazeem’s office to discuss the decertification petition.” (GC Br., at 73.) However, that was not Salman’s testimony. Salman specifically testified that she went to work on May 10, and that this specific incident occurred on that day. While the timesheet was introduced into evidence after Salman had finished testifying, if Salman was confused about the date this alleged conversation occurred, it was incumbent upon the government to resolve the issue; it did not do so. A violation must be based upon credible evidence, and not conjecture, speculation, or surmise. Cf., *Ramada Inn of South Bend*, 268 NLRB 287, 298 (1983); *Firestone Tire & Rubber Co. v. NLRB*, 539 F.2d 1335, 1339 (4th Cir. 1976). Because Salman specifically testified this incident occurred on May 10, and the evidence shows she was not working that day, I recommend that this complaint allegation be dismissed.

B. 8(a)(5) Violations of Bad-Faith Bargaining

For an employer, soliciting employees to sign or circulate a decertification petition is “antithetical to good-faith bargaining.” *Haymarket Bookbinders, Inc.*, 183 NLRB 121, 121 (1970). Indeed, in *Alle Arcibo Corp.*, 264 NLRB 1267, 1267 fn. 1, 1274 (1982), the Board found that the employer violated 8(a)(5)’s obligation to bargain in good faith by soliciting employees to sign a petition to decertify the union; the Board found the conduct to be an independent violation of both Section 8(a)(1) and Section 8(a)(5) of the Act. Here, as outlined above, there are multiple instances of Respondent soliciting signatures on the petition to decertify the Union, either directly or surreptitiously. Accordingly, I find that Respondent’s conduct in soliciting employee signatures on the decertification petition is a breach of its obligation to bargain in good faith and constitutes a violation of Section 8(a)(5) of the Act.

The General Counsel also asserts that Respondent violated Section 8(a)(5) by “delay[ing] and extend[ing] bargaining to avoid reaching a collective bargaining agreement.” (GC Br., at 77.) While the duties imposed under Section 8(a)(5) of the Act

does not obligate a party to make concessions or yield a position fairly maintained, it does require a “serious intent to adjust differences and to reach an acceptable common ground,” rather than “merely go[ing] through the formalities of negotiation[s].” *Continental Insurance Co. v. NLRB*, 495 F.2d 44, 47–48 (2d Cir. 1974) (internal quotation omitted). Thus, negotiating as a kind of “sham” while intending to avoid an agreement amounts to bad faith bargaining in violation of Section 8(a)(5). *Id.* at 48. To resolve an allegation of bad faith bargaining the “state of mind” of the alleged offender, insofar as it bears upon negotiations, must be resolved. *Id.* And, because “it would be extraordinary for a party directly to admit a ‘bad faith’ intention, his motive must of necessity be ascertained from circumstantial evidence.” *Id.* This includes “the party’s overall conduct and on the totality of the circumstances, as distinguished from the individual pieces forming part of the mosaic.” *Id.* Specific conduct, while standing alone may not amount to bad faith bargaining, when considered in relation to all the other evidence, may support an inference of bad faith. *Id.*

Applying these principles here, I find that the totality of Respondent’s conduct amounted to bad faith bargaining. Viewed in its entirety, the evidence shows that Respondent pursued tactics designed to delay and prolong negotiations while at the same time trying to undermine support for the Union and soliciting employee signatures to decertify the Union.

1. Delay in providing bargaining proposals.

“It is manifestly detrimental to the Union’s preservation of employee support to delay the submission of proposals.” *J.P. Stevens & Co., Inc.*, 239 NLRB 738, 765 (1978), *enfd.* in part, part 623 F.2d 322 (4th Cir. 1980). Thus, Respondent’s delay in presenting counterproposals is a factor I have considered in finding bad faith. *Fallbrook Hospital Corp.*, 360 NLRB 644, 652 (2014), *enfd.* 785 F.3d 729, 737 (D.C. Cir. 2015).

At the initial bargaining session on December 8, 2015, the Union presented its proposal for a new contract which included proposals on wages, pensions, and healthcare. I find it significant that, when the parties next met on January 26, 2016, Respondent did not present any counterproposals on these key economic issues. Instead, it simply “rejected” the Union’s proposals without explanation and said that its proposals were “forthcoming.” However, Respondent did not present a specific proposal on wages or healthcare until March 22, 2016 (15 weeks after receiving the Union’s initial proposals); and did not present a proposal on pensions until November 2, 2016 (almost 11 months after first receiving the Union’s initial proposal). In *Bewley Mills*, 111 NLRB 830, 831 (1955), the Board found a delay of “almost 7 weeks” in submitting counterproposals to be a factor indicative of bad faith. And in *J.P. Stevens*, the Board noted that when “an employer takes 6 months or a year just to submit proposals, it can reasonably foresee the erosive effect . . . on a union’s strength among the employee population . . . [and] strongly suggests that such an effect was deemed desirable.” 239 NLRB at 765. Given the circumstances of this case, and as further explained, I find Respondent’s dilatory tactics on presenting its initial counterproposals on the key economic provisions of wages, healthcare, and pensions as evidence of its bad faith.

a. Bargaining regarding Respondent's medical/dental proposal

The facts surrounding Respondent's medical and dental proposals support a finding that Respondent was intent on "slow walking" the bargaining process to gain time until a new decertification petition could be circulated. The Union presented its initial healthcare proposal on December 8, 2015. At the time, Respondent was facing the unfair labor practice allegations in the November 2015 Complaint, which included allegations that Respondent was asking employees to sign a decertification petition. (GC 3, p. 52.) At the next bargaining session, on January 26, 2016, Respondent indicated that it "rejected" the healthcare proposal, but did not present a counterproposal.

At trial, when questioned by Respondent's counsel, Nazeem testified he reviewed alternate health and welfare plans in the middle of February 2016 and decided that Respondent would keep the Union's benefit plans because they could not find any better alternatives.⁴³ Notwithstanding, at the next bargaining session on March 8, 2016, Respondent did not inform the Union that it would keep the existing health and benefit plans, or otherwise present a counterproposal. Instead, Respondent simply said that it had significant homework to do before presenting a proposal. It was not until the March 22 bargaining session that Respondent made its healthcare proposal to the Union: keep the existing healthcare plans, but freeze the premiums.

During the delay in revealing to the Union that it had agreed to keep the existing plans, Respondent was busy settling the allegations from the November 2015 complaint. On February 24, 2016, the government approved a settlement agreement with Respondent regarding the November 2015 complaint; the settlement contained a 60 day compliance period. (GC 3 p. 48.) Thus, it was in Respondent's interest to draw-out negotiations until the compliance period could end and a new decertification petition could be circulated. Meanwhile, during this same time frame Respondent was telling newly hired employees to not join the Union. And when Singh started circulating a new decertification petition after the compliance period had ended, Respondent was ordering or otherwise soliciting employees to sign the petition. Under these circumstances, I find Respondent's 15-week delay in presenting the Union with a proposal on healthcare is indicative of bad faith. *Bewley Mills*, 111 NLRB at 831.

b. Bargaining about wages

At the first bargaining session on December 8, the Union stated that wages were its biggest priority, as employees had not received an increase since June 2009, and presented its initial wage proposal to Respondent. Notwithstanding the fact

that it had owned the hotel for over 4 months, Respondent just listened; it made no counterproposal on wages. Similarly, at the next bargaining session on January 26, 2016, Respondent merely "rejected" the Union's wage proposal, and said a proposal on wages was "forthcoming." Not until March 8, 2016, did the Respondent inform the Union that it was "premature" to put forth a wage increase and proposed instead that wages be "put on hold" for a year to evaluate the hotel's profitability, noting that wages for about half of the unit increased on January 1 because the California minimum wage was raised to \$10 per hour.

Thus, it took Respondent 3 months to finally give the Union its initial position on wages—and that position was simply to wait until July 2016. And, in November 2016, when Respondent finally gave a wage proposal to the Union, it stated that wages would remain the same, this time remarking that employees were again due to receive a minimum wage increase in January 2017. Meanwhile, according to Singh, the fact that hotel workers were only getting the minimum wage was a reason employees supported the decertification petition. Again, under the circumstances set forth above, I find that Respondent's conduct in delaying its initial proposal on wages for 3 months is evidence of bad faith. *Bewley Mills*, 111 NLRB at 831.

2. Respondent's various other bargaining proposals

As further evidence of bad faith, I find that several of Respondent's other bargaining proposals were put forth to either purposely delay bargaining while a new decertification petition could be circulated, or were otherwise advanced to "make concessions here and there . . . to conceal a purposeful strategy to make bargaining futile or fail." *NLRB v. Herman Sausage Co., Inc.*, 275 F.2d 229, 232 (5th Cir. 1960).

a. Respondent's position on Union Security

The Board has found that an employer's opposition to a union security clause "for purely 'philosophical' reasons, without advancing any legitimate business justification" can be evidence, when viewed in the context of a party's overall conduct as a whole, that an employer is bargaining without a sincere desire to reach an agreement. *Universal Fuel, Inc.*, 358 NLRB 1504, 1504 (2012). See also *Bryant & Stratton Business Institute*, 321 NLRB 1007, 1043 (1996) (philosophical objections to union security clause do not satisfy the obligation to bargain in good faith). In its January 2016 first set of proposals to the Union, Respondent wanted to eliminate the union security clause, notwithstanding the fact the clause had existed since at least 2006. The Union replied that this proposal would be "an issue" for the Union in negotiations. Throughout negotiations Respondent consistently maintained proposals to eliminate the union security clause without advancing any business justification, let alone a legitimate business justification. Instead, Respondent simply argued that people could voluntarily pay union dues, but that it should not be a condition of employment. Under the circumstances presented here, where Respondent was simultaneously telling employees to not join the Union and soliciting signatures on the decertification petition, I find that Respondent's bargaining posture regarding the removal of the union security clause from the CBA was designed to delay and

⁴³ When cross-examined by the General Counsel, Nazeem attempted to portray his "research" into healthcare options as being much more detailed and prolonged, claiming he did not complete his evaluation until April. However, I credit Nazeem's original testimony on direct examination that "in the middle of February . . . [he] spoke to three different independent insurance carriers and . . . decided since we couldn't find anything as good as what the Union was offering, that we would keep their health, welfare, pension and dental and vision plans." (Tr. 761.)

frustrate bargaining in the hope that the Union would be decertified before an overall agreement could be reached. It is therefore evidence of Respondent's bad faith.

b. Subcontracting and Seniority

I also find that Respondent's proposals regarding subcontracting and seniority were designed to "make concessions here and there" while "conceal[ing] a purposeful strategy to make bargaining futile or fail." *Herman Sausage Co.*, 275 F.2d at 232. Regarding subcontracting, Respondent originally proposed altering the existing subcontracting language to allow it to subcontract without restriction. Then, after its settlement agreement involving the November 2015 complaint had been approved, on March 22, 2016, Respondent agreed to keep the existing language on subcontracting. Thus, it appeared that Respondent was making a concession; however, on March 3 Gutierrez was telling Arteaga to not join her coworkers if she was invited to join the Union.

Respondent's position regarding seniority was similarly designed to feign a concession and to delay bargaining. In January 2016, Respondent proposed radically altering the exiting seniority proposal, seeking a merit system with seniority as a deciding factor only when, in Respondent's opinion, everything else was equal. Respondent held firm to this position until January 2017. Then, at the January 2017 bargaining session, Respondent proposed using job classification seniority for purposes of layoffs. Otherwise, seniority would only be used as a tie breaker if Respondent deemed all other factors were equal. Of course, by the time Respondent had "moved" on the issue of seniority, it had already committed the various 8(a)(1) violations set forth above, and the trial in this matter had already started.

Based upon the foregoing, the totality of the circumstances show that Respondent engaged in bargaining without a good-faith intent to resolve differences and reach common ground in violation of Section 8(a)(5) and (1) of the Act. See *Universal Fuel, Inc.*, 358 NLRB 1504, 1504 (2012).

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. UNITE HERE! Local 49 (Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees employed by Respondent at the Holiday Inn Express, located between 15th & 16th Streets and G & H Streets, in Sacramento, California, performing the work covered by the collective-bargaining agreement between the Union and Hospitality Sacramento L.P., effective June 1, 2006, to December 31, 2009, constitutes an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. By instructing employees to sign a petition to decertify the Union, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. By instructing employees to sign a petition to decertify the Union under threat of discharge, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. By instructing employees not to sign any documents given to them by the Union, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. By instructing employees not to go with their coworkers if they are invited to join the Union, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. By instructing employees not to talk to union representatives or join the Union, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

9. By purposely misleading employees about the benefits received from union dues deducted from their paycheck, in order to dissuade them from supporting the Union, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

10. By asking employees why they cancelled their signature from a petition to decertify the Union, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

11. By soliciting signatures on a petition to decertify the Union, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

12. By bargaining in bad faith, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act.

Specifically, having found that Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to bargain with the Union in good faith, Respondent shall, upon request, bargain collectively with the Union as the bargaining representative of unit employees with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

The General Counsel also seeks as a remedy that Respondent be ordered to bargain with the Union for a reasonable period of time as required by *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011). In *UGL-UNICCO*, the Board reestablished a "successor bar," and held that in successorship situations there is a conclusive presumption of majority support for a defined period of time, preventing any challenge to the union's status. In cases, such as here, where the successor has recognized an incumbent union and adopted the existing terms and conditions of employment as the starting point for bargaining, without making unilateral changes, the union is entitled to a conclusive presumption of majority support for a period of 6 months, measured from the date of the first meeting between the union and the successor employer.⁴⁴ *Id.* at 809. During this period the Union's majority status cannot be challenged "through a

⁴⁴ In situations where the successor recognizes the union, but unilaterally establishes initial terms of employment, the period of conclusive presumption of majority support will be a minimum of 6 months and a maximum of 1 year. *UGL-UNICCO Service Co.*, 357 NLRB at 809.

petition filed by employees, by the employer, or by a rival union; nor . . . may the employer unilaterally withdraw recognition . . . based on a claimed loss of majority support.” *Id.* at 808

Here, the first bargaining session between the parties occurred on December 8, 2015. Thus under the standard established in *UGL-UNICCO*, the Union was entitled to a conclusive presumption of majority support for 6 months—until June 8, 2016. During this time, Respondent was entitled to bargain with Respondent in an environment free from any challenge to its representational status. However, Respondent’s unfair labor practices during this period denied the Union this opportunity, particularly its solicitation of employee signatures to decertify the Union, which is the antithesis to good faith bargaining. *Haymarket Bookbinders, Inc.*, 183 NLRB at 121. Therefore, in an attempt to restore the status-quo ante, as part of the order that Respondent bargain with the Union in good faith, it is further ordered that the Union is entitled to a further 6 month successor bar period as defined in *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011).

I also order that Respondent post a notice in accordance with *J. Picini Flooring*, 356 NLRB 11 (2010), in English, Spanish, and Hindi.⁴⁵ In addition to the notice posting, the General Counsel seeks a notice-reading remedy, arguing that such a special remedy is “warranted by the serious and persistent nature of Respondent’s unfair labor practices, especially in light of Respondents’ repetition of the alleged misconduct.” (GC Br., at 99.) A notice-reading is a “special” remedy imposed where the violations are particularly numerous and egregious or where the respondent is a recidivist violator of the Act. *Sprain Brook Manor Rehab, LLC*, 365 NLRB No. 45, slip. op. at 60 (2017) (notice-reading ordered where employer was recidivist violator, engaged in numerous 8(a)(5) violations, and discharged three employees in violation of Section 8(a)(3)); *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 176 (2001) (multiple 8(a)(1), (3), and (4) violations not sufficiently egregious to warrant a notice-reading, which is an extraordinary remedy). Here, while Respondent has bargained in bad faith, it made no unilateral changes and has continued to apply the terms of the CBA to unit employees. Moreover, Respondent is not a recidivist violator. Although the November 2015 complaint accused Respondent of engaging in substantially similar violations, the government approved a settlement agreement containing a non-admissions clause, and no independent evidence was introduced regarding the alleged conduct covered by the settlement. Accordingly, while Respondent’s violations in this matter are indeed serious, I do not believe the circumstances warrant a notice-reading remedy.

The General Counsel also seeks the extraordinary remedy of a notice-mailing, arguing that Respondent has high “turnover rates,” and that some employees are unfamiliar with their Section 7 rights. However, evidence of the actual amount and specific timing of employee turnover is slim. Therefore, I find that the remedies already ordered are generally sufficient to effectuate the Act’s policies. That being said, I will order that a

copy of the Notice be mailed to the last known address of Salman, Arteaga, and Abel. This will ensure that the three individuals who were directly exposed to Respondent’s 8(a)(1) violations, but who are no longer physically working at the hotel and therefore unable to view the notice posting, will be made aware of the violations and Respondent’s obligations.

Finally, the General Counsel asks that I order training for employees on their rights under the Act, and for supervisors and managers on compliance under the Act. However, I decline to do so, as I find that the other remedies ordered herein are more than sufficient to effectuate the policies of the Act.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended⁴⁶

ORDER

Respondent Kalthia Group Hotels, Inc., and Manas Hospitality LLC d/b/a Holiday Inn Express Sacramento, a single employer, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, and coercing employees in the exercise of their Section 7 rights by ordering, encouraging, and soliciting employees to sign a petition to decertify UNITE HERE! Local 49 (Union) as their collective bargaining representative.

(b) Instructing employees to sign a petition, or any other document, to decertify the Union.

(c) Threatening employees they will be discharged if they do not sign a petition, or any other document, to decertify the Union.

(d) Instructing employees not to go with their coworkers if they are invited to join the Union.

(e) Instructing employees not to join the Union.

(f) Instructing employees not to talk to union representatives.

(g) Purposely misleading employees about the benefits received from union dues deductions in order to dissuade them from supporting the Union.

(h) Asking employees why they cancelled their signatures from a petition to decertify the Union.

(i) Refusing to bargain collectively and in good faith with the Union concerning rates of pay, hours of employment, and other terms and conditions of employment, by soliciting signatures from employees on a petition to decertify the Union, and by bargaining with the Union in bad faith with no intention of entering into any final or binding collective-bargaining agreement.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively with the Union for a reasonable period as set forth in the remedy portion of this decision, as the bargaining representative of unit employees with

⁴⁵ The record shows that employees at the hotel speak English, Spanish, and Hindi. (Tr. 503–504, 670.)

⁴⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed collective-bargaining agreement.

(b) Within 14 days after service by the Region, post at the Holiday Inn Express Sacramento, copies of the attached notice marked "Appendix," in English, Spanish, and Hindi.⁴⁷ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. Respondent shall also mail a copy of the notice to the last known addresses of: Suhad Salman, Sylvia Arteaga Figueroa, and Vanessa Abel. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the closed facilities any time since April 1, 2016.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 8, 2017

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf

⁴⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain in good faith with UNITE HERE! Local 49 (Union) involving the terms and conditions of employment in a new collective-bargaining agreement.

WE WILL NOT solicit employee signatures on a petition to decertify the Union.

WE WILL NOT instruct employees to sign a petition to decertify the Union, or threaten them with discharge if they do not sign such a petition.

WE WILL NOT instruct employees to not sign any documents given to them by the Union or instruct them to not join the Union.

WE WILL NOT instruct employees to not go with their coworkers if they are invited to join the Union.

WE WILL NOT instruct employees to not talk to union representatives or purposely mislead employees about the benefits received from union dues deductions.

WE WILL NOT ask employees why they cancelled their signature on a petition to decertify the Union.

WE WILL, upon request, bargain with the Union concerning the terms and conditions of employment for employees represented by the Union, and if an understanding is reached, embody the understanding in a signed agreement.

KALTHIA GROUP HOTELS INC., AND MANAS
HOSPITALITY LLC D/B/A HOLIDAY INN EXPRESS
SACRAMENTO

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/20-CA-176428 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

